

Written comments and drafting suggestions from Latvia
regarding the Proposal for a Directive of the European Parliament and of the Council
on common rules promoting the repair of goods and amending Regulation (EU)
2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828
(25.07.2023.)

We would like to thank the Spanish Presidency for preparing these discussion questions.

As a general comment, we would like to highlight the need to ensure greater consistency and harmonization in relation to other pieces of legislation that are in effect or still being discussed (*Eco Design and ECGT*).

The proposal should not create additional administrative burden for repair service providers if we would like to eventually foster the availability and popularity of repair services. We have considerable doubts this proposal is appropriate for the needs of a small repair shops, often run by 1 or 2 persons and without online presence.

Below You will find the written answers on the discussion paper from Latvia:

1. We believe that it is not necessary to include the proposed definitions, because the definition of "*repairer*" already exists in Article 2 of the Proposal. We do not see any added value for the concept "*independent repairer*", because the existing definition of "*repairer*" already says that it is "*any natural or legal person*", while the concept of "*repair*" basically is already clear from the context, i.e. to repair a damaged item. In addition, it should be noted that the definition of "*repair*" already exists in Article 2 of the proposal on Ecodesign regulation.
2. We believe that the redundant requirements, which to a great extent duplicates the proposal for Eco Design regulation, should be excluded from the proposal. For example, in Article 21 of Eco Design regulation is stated that manufacturers ensure that consumers and other direct users are informed about the repairability of the product (in the instructions for use).
3. In our opinion, this form is inherently useless, and its mandatory nature cannot be considered proportionate in relation to repairers - it will create an administrative burden for business, and we do not really see its added value for the consumer. Latvia is concerned whether a consumer with a damaged refrigerator will really visit several repairers to fulfill this idea. In addition, existing consumer regulations already states that, when providing a service, the consumer must have the opportunity to get acquainted with the price list before receiving the service, which should also contain information on how the price of the service is being formed. We believe that, if this form will be kept in the proposal, adding additional information to it is not a solution to improve informing consumers about the product's repairability - too much information will only confuse consumers and it will also be difficult to

control its correctness. We can support the retention of this form in the proposal only if the preparation and issuance of this form is voluntary.

4. We do not see the added value of introducing such separate fee, because there should already be a price list for the services provided. In addition, it should be noted that there is already a regulation in the consumer law regarding the charges related to goods and services for consumers.
5. We do not agree that any time limits should be set out. Issuing the form itself already creates an administrative burden and imposing additional deadlines once again will create an additional burden. Besides now, at least regarding the prevention of non-compliance, it is stipulated within the framework of the legal guarantee that the non-compliance of a product should be prevented within a reasonable period of time. Setting new deadlines means that someone must monitor compliance with these deadlines and handle complaints, which is a burden for supervisory authorities. We draw your attention to the fact that the mentioned terms will differ for different goods, and it is impossible to predict them correctly - they have to be evaluated individually, so we want to keep the condition of a reasonable time in this matter as well.
6. The manufacturer and all its subcontractors who carry out conformity testing and repair of the product should already have concluded mutual agreements. The consumer has an interest in having his product repaired within the scope of the contract, and in this context, it doesn't matter who performs the repair. In our opinion, the mutual relations on the business side doesn't need to be regulated in acts intended for consumers.
7. Latvia doesn't support the wording of the article - it is very vague and easily misunderstood. In the context of other regulations, this wording means that a service is provided and received in exchange for personal data, but we do not consider that the payment for the repair service should be linked to personal data as it is in other cases.
8. We do not see a possibility in which way this condition would be implemented, because information about these service providers will not be available to consumers, therefore there is no added value for including it. In addition, we point out that no adequate impact assessment has been carried out on this issue.
9. We believe that Article 6 should not be included in this Directive, because similar conditions will already be included in other legal acts, such as the Ecodesign regulation, which will determine the obligation to inform the consumer that the specific product can be repaired (see answer to question No.2). If this article is retained in this proposal, such information should be provided in a standardized way, for example with digital product passports. However, on the other hand, vulnerable consumers should also be considered, because not all consumers have access to the Internet or do not have sufficient knowledge to use it, so it is important for now that the information also remains in a tangible, paper format (such as user manual, etc.).

10. LV is not in favor of the idea to impose on MS the obligation to create and maintain the online platforms. As many colleagues indicated during the meeting, these are considerable administrative burden and expenses for state budget, because the platform not only has to be created, but also maintained. Without an obligation to register, there is no guarantee these resources will be spend efficiently. In addition, since Article 7 foresees the opportunity for repairers to place information on or through the platform, Digital services Act will apply to this platform, which foresees quite extensive requirements, including ensuring points of contact, transparency reporting, notice and action mechanisms, internal complaint handling systems, out of court dispute settlement, rules for online interface design, protection of minors, etc. Excluding repair service providers from the platform might not be as easy – since it will be a platform with content provided by third parties, Digital Service Act (DSA) will apply which enables repair service providers as recipients of the platform to launch a complaint regarding decisions to suspend or terminate their access to the service. In this case, there are no legal grounds, unless the repair service provider is posting illegal content on the platform, to limit access to the service.

In addition, consumers might perceive service providers on this platform as being state “approved” or of certain quality and therefore more reliable, which will not be the case.

We propose to make this requirement for ensuring an online platform voluntary, inviting member states to promote the creation of such platforms, but not obliging them to create and to maintain one. We should encourage repairers to offer their services to consumers in the best way possible, but it should be kept in mind that such platform will be a great financial and administrative burden for member states, especially small ones. We **propose following text to replace current Article 7:**

Article 7

Online platforms for repair and goods subject to refurbishment

Member States shall promote existence of online platforms in their territory that allow consumers to find repairers, sellers of goods subject to refurbishment or purchasers of defective goods for refurbishment. The use of online platforms shall be free of charge for consumers.

Latvia as a compromise could accept and support creation of EU wide platform managed and maintained by Commission. It should be considered that many repairs are actually not carried out in the specific country, so a common EU page would be a better solution. If someone in the given member state wants and takes the initiative, a national-level platform can also be created, because, as several DVs already mentioned in previous working group meetings, it will be difficult for small countries to create and

maintain such a platform (large financial, administrative and manpower investment). Existing pages, if any, can continue to run alongside the EU page. We believe that it is necessary to find a technologically neutral solution that would ensure the circulation of information about repair services.

11. The idea could be supported, as it would make it easier for consumers to hand over their goods, but, as mentioned above, we believe that this platform should be created at the EU level (see the answer to question 10). In addition, we believe that information about repaired and used products should be placed on the platform voluntarily, and not as a mandatory part of the platform.
12. We do not agree with the proposed wording of Article 12 and call for a review of the entire wording of Article 13 of Directive 2019/771, because this addition to the article creates contradictions - the consumer can choose repair, but if the cost of repair is the same or less than the replacement of the product, repair becomes a mandatory obligation, so the consumer has a choice with conditions.
 - 12.1. We do not consider it necessary to single out any individual exceptions, it is too complicated and useless in this context;
 - 12.2. Latvia cannot support the idea that someone should control something again. This issue could be resolved in a similar way to how disputes are currently resolved in the Consumer Disputes Alternative Resolution Directive (2013/11/EU), respectively, if the consumer and the repairer cannot agree on what to do with the damaged product, which is considered an individual dispute, then both parties turn to and individually resolve the specific issue with the relevant national supervisory authority;
 - 12.3. We believe that a good solution could be that the warranty period is extended for the time that the product has been under repair - that is, either the warranty period is extended for the days that the product has been at the repairer, or the warranty period is frozen for the duration of the repair. Such solution would also serve as an incentive for repairers not to subjectively and artificially extend the duration of the repair;
 - 12.4. See the answer to the previous paragraph.
13. We believe that it is not necessary to regulate this issue separately, because now no one prevents the repairer and the consumer from agreeing on a different and more advantageous solution in the specific situation. By introducing such point, it could cause confusion about the cases of its application - when such individual agreements can and cannot be made.
14. This cannot be properly defined because all costs are a subjective factor and they depend on what the market price is for both spare parts and shipping costs etc., so some sort of market and price research must be done to calculate these costs. We believe that this issue could possibly be resolved within the framework of an individual dispute, as described earlier, when the parties submit evidence, and they are individually evaluated to make the most appropriate decision. Latvia is concerned about who will be the one who will

carry out this activity and control its compliance - this is again an unnecessary burden for the supervisory authorities.

15. We believe that this proposed article will not be useful, because repairers already now can voluntarily perform such activities on their own initiative, and thus it is not necessary to regulate it here. If it is decided to add such article to the existing proposal, then these options should not be mandatory, but voluntary, without imposing any binding obligations or requirements on the repairers.

We think that one of the options, that could be introduced, would be to inform consumers about the benefits of repairs directly in terms of sustainability e.g., in the form of a campaign, clearly indicating that if repairs are carried out, less goods are produced and subsequently thrown away. This work should also be done by producers and sellers - to inform and address consumers about the sustainability, quality, energy efficiency, etc. of goods. Regarding "*vouchers*" or other solutions, we currently do not see an opportunity to implement them effectively.

Written comments from Estonian delegation

We thank the Presidency for providing the opportunity to present written comments on the proposal concerning right to repair.

Estonia's official position has not yet been confirmed. Estonia has a negative parliamentary reservation and thus, all comments are still preliminary.

1. Do you consider it useful to include a definition of „repair“ and „independent repairer“? If so, how would you define them?

We think that the inclusion of these definitions might be considered.

Term “repair”

To us it seems that the term “repair” has a major impact on the scope of the Directive. If the aim is to promote the internal market and harmonise different rules, it may be useful to define the term “repair”. This would ensure that “repair” is understood in the same way in every Member State.

We are not sure whether the term “repair” has been defined in any currently valid European Union legal acts. However, Article 2 point 20 of the Council's general approach of the Regulation on the Ecodesign for Sustainable Products determines “repair” as actions carried out that return a defective product or waste to a condition where it fulfils its intended use. It might be worth considering whether this definition could also apply to this Directive.

Term “independent repairer”

The term “independent repairer” has been defined in Article 3 point 47 of Regulation 2018/858. Although this provision is about vehicles, we could perhaps still use this as an example.

2. Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

To us, it is not clear which rules of this proposal apply to all products, and which rules apply only to products for which reparability requirements are laid down and are listed in Annex 2. We consider it important that the scope of the Directive and the Articles is clearly determined.

3. Regarding the European Repair Information Form, would you be in favor of adding any other conditions in Article 4, paragraph 4? If so, which?

We overall wonder whether there is a sufficient added value for the consumer to justify imposing an obligation to repairers to provide the European Repair Information Form. We already have clear pre-contractual information requirements stipulated, for example, in the Consumer Rights Directive. For us, that is sufficient enough. We question whether it is necessary to foresee different information requirements from the Consumer Rights Directive.

4. Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where consumer chooses to have the product repaired?

We still have doubts about the added value of the Form. However, to answer the question, at first glance it seems to us that it should be up to the repairer to decide whether he/she will deduct the price charged to the consumer for provision of the Form. Thus, this Directive should not restrict the repairer from making such a decision himself/herself.

Instead we should ensure that if a consumer pays the repairer for providing the Form, the repairer should not be able to refuse to provide the repair service. We understand that when determining the defect of the product, it cannot be promised that the product is definitely repairable. But perhaps the determination of the defect and the provision of the Form should be separated. For example, it could be specified that the Form could only be provided if the product is repairable. This would mean that the consumer would be able to ask for the Form once the defect has been determined by the repairer. In such case, the consumer would have paid to have the defect in the product determined before asking for the Form.

Only then should the repairer provide the Form. Even then, if the repairer were able to charge a fee to the consumer, it should be clearly defined for what this fee can be charged of.

5. Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

Provision of the Form

When introducing time limits, it is important that these rules strike a balance between the interests of consumers and those of repairers. Firstly, rather than determining a specific number of days to provide the Form, the term “reasonable time” could be used. Secondly, if we set a time limit for submitting the Form, at what moment would the time start running? From the moment the Form is requested by the consumer or from the moment the defectiveness of the product is determined? Every repair situation is different. Therefore, it is very important to define from which point in time the deadline should start to run.

For example, in order to provide the Form, the repairer must make clear what the defect of the product is. To do this, the repairer may have to go to the consumers home to look at the product. Thus, if the time limit were to start running from the moment the consumer asks for the Form, this would essentially mean that within the same time limit, the repairer would also have to determine the defect in the product. Perhaps that would be too restrictive. Maybe the repairer and the consumer cannot find a suitable moment for both of them within this time limit for the repairer to come and inspect the product. So, if some kind of a time limit were to be created, perhaps it should start running from the moment the repairer has determined the defect. This would not be a problem if the provision of the Form and the determination of the defect are kept separate, as we have described in the answer to question 4.

Repair service and assessment of the defect

To us it does not seem reasonable to set time limits for offering the repair service. The length of the repair service also depends, for example, on delivery times of spare parts. The repairer might not have any control over this.

Same goes for the assessment of the defect. Some repairers and some consumers are so busy that it may not be easy to find the right time that is suitable for both. We should not interfere that much such matters.

6. Do you think a clarification about the division of liability between producer and subcontractor should be included in the Articles or the recitals? If so, how would you clarify it?

Some clarity is needed on this issue, but at the moment we are still analysing it and cannot say what the right solution would be. For us, it is more important at this stage to find out what the obligations are for the subcontractor if the producer uses him to fulfil his obligation. For example, we said in our previous written comments that under Estonian law Article 5(1) would not imply an obligation for the subcontractor to enter into a contract with the consumer. The contract would still be between the consumer and the producer.

7. Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the Article or do you prefer to explain it in the recitals?

Estonia is still analysing this question.

8. Regarding the cascade of obligation to repair foreseen in Article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?

Before we start adding anyone else as an obligated party to repair, it should be clearer who already is subject to the obligation to repair. Right now, it is difficult to assess which persons will be affected by Article 5 paragraph 2. The definitions of the persons mentioned derive from the Regulation on the Ecodesign for Sustainable Products. The procedure for that Regulation is still ongoing. Therefore, it

would firstly be necessary to clarify who is affected by the cascade of obligation to repair. We would also like to note that the impact on fulfilment service providers has not been analysed, so the list of persons currently subject to the obligation to repair should not be extended.

9. Regarding Article 6, would you further develop the information to be provided? What information would you include and why?

We can overall welcome the flexibility left to producers on how to comply with the obligation to inform consumers. However, at the moment it is not entirely clear to us to what extent the producer must inform the consumer. It is important that the extent of this obligation is sufficiently clear to all market participants.

Perhaps it should be specified in this Directive that the producer must inform the consumer, for example, which repairers repair the consumer's product. Also, for which defects the product can be repaired and for how long the consumer can request the repair. We also noted it in our previous written comments. There could also be details on where to buy spare parts as well as home repair instructions. All this information could be disclosed in a digital product passport. Given that the procedure for Regulation on the Ecodesign for Sustainable Products is still ongoing, it is not clear whether Article 6 will allow this information to be disclosed in the digital product passport or not. Clarity on this issue is certainly needed.

10. In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level; (ii) EU level; (iii) national level with an access point on the EU portal. Why?

It seems to us that it would be more efficient to create a platform at EU level.

Firstly, we note that the consumer has all the necessary information on the EU platform. While using the search function, the consumer could choose to look up those repairers that are located in the consumer's home Member State. If a consumer cannot find a repairer in their own Member State, it would be easy for them to search for repairers in a neighbouring Member State on the same online platform. In such a situation, it would be difficult and confusing for the consumer to have to look for another website with a different design etc. To make the EU-wide online platform easier to use, the search function could be designed in such a way that the consumer can search for a repairer in a particular Member State or in a specific city in a Member State.

Secondly, a single platform at the EU level is also useful in situations where consumers move from one Member State to another. In that case, the consumer would already know which platform to use and could easily find everything there. This is also important for improving the internal market.

We would also like to mention an observation made by one of the delegations in the previous Working Party. Creating an online platform at EU level is not far from the consumer. Every platform is easy to find and access online. In any case, in order for consumers to use any online platform, it is essential to raise their awareness.

For now, consumers can search for information on repairers using, for example, the Google search engine. For us, that is sufficient enough, but on the basis of the above, it may be useful for the consumers to create just one single EU-wide online platform.

11. Do you support the provision in Article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option?

As a general remark, we prefer an EU-wide platform. For the sake of compromise, we might accept a platform at a Member State level if its creation would be voluntary for Member States. In our view, the creation of a function for the platform as described in Article 7(2) should also remain optional. Creating the platform incurs different costs. In smaller Member States, like Estonia, there may not be that many repairers from whom it would be possible to receive enough registration fees to cover the costs of creating and maintaining the platform. Most businesses in Estonia are also SME-s who might not be ready to pay a fee for registration. Thus, creating an online platform alone would be costly for us, and each additional feature would be even more costly.

There would also incur costs for supervision. When a Member State creates an online platform, the responsibility for the accuracy of the data would most likely fall to the Member State.

Therefore, for all the reasons above, the online platform itself and the function described in Article 7 paragraph 2 should be made voluntary in the absence of a single EU-wide online platform.

12. Regarding Article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

- 12.1. Exceptions. If so, which one(s)?**
- 12.2. Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?**
- 12.3. An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?**
- 12.4. An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?**

To us, it is not clear enough what Article 12 will entail. As it is worded in the Commission's proposal, we see several problems. According to recital 28, the consumer should remain entitled to choose repair over replacement, unless repair would be impossible or it would impose disproportionate costs on the seller as compared to replacement. To us, however, this does not appear from the proposed amendment in this Article. According to the wording of this Article, instead, it seems that the consumer's right of choice will be completely lost, and the decision whether to repair or replace the item is up to the seller depending on the costs.

To us, it is not clear whether the idea under Article 12 was to give the seller just an opportunity to refuse replacing the product, or was the intention to impose an obligation on the seller to refuse to replace the product, if the costs for replacement are equal to or greater than the costs for repair. Regardless of which approach the Commission had intended, the amendment will change the nature of consumer's rights in a situation where the seller has breached the sales contract. For the consumer, it is already inconvenient if the seller has breached the contract by handing over a product that does not meet the conditions of the contract. For us, it is important that the consumer's interests are also protected in such situations. It is crucial that the seller's decision to repair the product instead of replacing it does not outweigh the consumer's legitimate interest in receiving a product that complies with the terms of the contract at a time convenient for the consumer and according to his/her needs.

Article 12 as it stands will also increase the administrative burden on sellers. Under Article 12, sellers would have to make a detailed assessment in each individual case of whether it is cheaper to repair or replace the product.

For the above reasons, we propose that the final decision whether to repair or replace the product should be made by the consumer. Therefore, it could be instead stipulated that the seller must first offer the consumer to repair the product, if the repair is cheaper than replacing the item, but the final decision would be up to the consumer.

Regarding questions 12.3 and 12.4, we have only recently transposed the Sale of Goods Directive and we reached a political agreement on the liability period and reversal period of the burden of proof. We do not think we should reopen the discussion on these issues.

13. Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in case where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771)?

At first sight, it does not seem to us that such a provision would be necessary. The fact that Article 21(2) of the Sale of Goods Directive allows the seller to offer more favourable terms to the consumer than those set out in the Directive does not sufficiently solve the problems arising from the wording of Article 12, which are described in the answer to question 12.

14. Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

I'm not sure how it can be determined in this Directive how to assess if the costs for replacement are equal to or greater than the costs for repair. Perhaps there should be given examples in the recitals of what sellers can count as costs when they determine the final price. For example, transport costs or the costs of purchasing the repair services, etc.

15. Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

If such a possibility is foreseen, it should certainly be voluntary because Member States can already take such measures. We see no reason why EU law should specifically provide a provision that would allow Member States to take such measures.

Table for comments

MEMBER STATE: IT

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 2023/0083 (COD)	Drafting suggestions	Comments
<p>(1) Directive (EU) 2019/771 of the European Parliament and of the Council¹ pursues the objective of improving the functioning of the internal market, while achieving a high level of consumer protection. In the context of the green transition, this Directive pursues the objective of improving the functioning of the internal market, while promoting more sustainable consumption, and thereby complements the objective pursued by Directive (EU) 2019/771.</p>		<p>As the concept of “refurbished good” is different from the one of “repaired good”, we suggest to expressly include the former in the scope of the directive, even changing the title of the proposal.</p>
<p>(2) In order to achieve these objectives, and in particular to facilitate cross-border provision of services and competition among repairers of goods purchased by consumers in the internal market, it is necessary to lay down uniform rules promoting the repair of goods purchased by consumers within and beyond the liability of the seller established by Directive (EU) 2019/771. Member States have already taken or are considering to introduce rules promoting</p>		<p>Currently, the Sales of Goods Directive provides the consumer with the choice between repair and replacement. Giving consumers choice is one of the fundamental objectives of EU consumer law. Accordingly, rather than making repair the only primary remedy, other measures to promote repairs could be adopted, while preserving consumers’ choice. For instance, replacement could be excluded in case of minor defects that do not impact the overall functionality or</p>

¹ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28).

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<p>repair and reuse of goods purchased by consumers outside the existing liability of the seller established by Directive (EU) 2019/771. Differing mandatory national rules in this area constitute actual or potential obstacles to the functioning of the internal market, adversely affecting cross-border transactions of economic operators acting on that market. Those operators may have to adapt their services to comply with the different mandatory national rules and may be faced with additional transaction costs for obtaining the necessary legal advice on the requirements of the law of the Member State of the consumer's habitual residence, when applicable pursuant to Regulation (EC) 593/2008 of the European Parliament and of the Council², and to adapt their contracts for the provision of repair services accordingly. This will affect, in particular, small and medium sized enterprises, mostly represented in the repair sector. Legal fragmentation may also negatively affect consumer confidence in cross-border repair due to uncertainties regarding factors which are important for the decision to repair goods.</p>		<p>aesthetics of the product. Moreover, were consumers provided with a free temporary replacement product, they would be more inclined to opt for repair rather than replacement. Furthermore, it would be important to ensure the transferability of the guarantees on consumer goods, particularly to encourage the growth of the second-hand market and, consequently, enhance the durability of goods. It is worth noting that some sectoral studies have shown that extending the duration of legal guarantees from two to five years would lead to a mere 1-2.9% increase in prices. Such an extension would complement the proposed measures and align with the objectives of the current Directive.</p> <p>Promoting competition among cross-border repairers can present challenges for repairers operating in countries with higher costs. However, this practice is feasible and already underway. It should be noted that for goods requiring repair or waste being refurbished, crossing borders may be necessary (the movement of goods and waste across borders is regulated by the waste Directive and other EU legislation). The establishment of cross-border provision of services, with national platforms being open to repairers from other Member States, may have adverse implications for consumers, as it would involve transporting the goods to be repaired to another country that may</p>
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² Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

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		not necessarily require crossing a border. Therefore, to counterbalance these effects, it is important to introduce measures such as temporary substitution of the product during the repair period and mandatory shipment insurance.
(3) In order to reduce premature disposal of viable goods purchased by consumers and to encourage consumers to use their goods longer, it is necessary to set out rules on repair of such goods. Repair should result in more sustainable consumption, since it is likely to generate less waste caused by discarded goods, less demand for resources, including energy, caused by the process of manufacturing and sale of new goods replacing defective goods, as well as less greenhouse gas emissions. This Directive promotes sustainable consumption in view of achieving benefits for the environment while also producing benefits for consumers by avoiding costs associated with new purchases in the short term.		
(4) Regulation (EU)... of the European Parliament and of the Council [on the Ecodesign Sustainable Products] lays down, in particular, supply-side requirements pursuing the objective of more sustainable product design at the production phase. Directive (EU)... of the European Parliament and of the Council [on Empowering consumers for the green transition] lays down demand-side requirements ensuring the provision of better		<p>Based on the insights gathered by Italian consumer associations, it is evident that premature disposal of goods is a prevalent occurrence. This can be attributed to the design of products, which prioritize replaceability over repairability.</p> <p>We ask as well consistency with regard to the energy labelling of smartphones and slate tablets, the proposed Commission delegated</p>

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information on durability and reparability of goods at the point of sale, which should enable consumers to make informed sustainable purchasing decisions. This Directive complements those supply-side and demand-side requirements, by promoting repair and reuse in the after-sales phase both within and outside the liability of the seller established by Directive (EU) 2019/771. This Directive thus pursues the objectives, in the context of the European Green Deal, of promoting a more sustainable consumption, a circular economy and the green transition.		regulation of June 16, 2023, supplementing Regulation 2017/1369/EU of the European Parliament and of the Council, provides for the label having a Repairability Score.
(5) This Directive should not affect the freedom of Member States to regulate aspects of contracts for the provision of repair services other than those harmonised in Union law.		
(6) Reparability requirements should comprise all requirements under Union legal acts which ensure that goods can be repaired, including but not limited to requirements under the ecodesign framework referred to in Regulation [on the Ecodesign for Sustainable Products], to cover a broad range of products as well as future developments in any other field of Union law.		The proposal mandates that manufacturers carry out repairs upon consumer request for products that fall under ecodesign measures. However, this obligation is applicable to only a restricted range of products, and there are no provisions in place to guarantee affordable repairs. Manufacturers have control over spare part prices and can prevent the use of third-party parts, giving them a competitive edge over independent repairers. Failure to address this competitive disadvantage would enable manufacturers to maintain control in the repair market, impeding efforts to reduce repair costs. Moreover, the limited scope of the legislation would exclude a significant portion of consumer

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		<p>products from benefiting from improved repair conditions.</p> <p>Conclusively, it is essential for manufacturers to ensure the timely and reasonably priced availability of spare parts.</p>
<p>(7) In order to help consumers identify and choose suitable repair services, consumers should receive key information on repair services. The European Repair Information Form should lay down key parameters that influence consumer decisions when considering whether to repair defective goods. This Directive should set out a model standardised format. A standardised format for presenting repair services should allow consumers to assess and easily compare repair services. Such standardised format should also facilitate the process of providing information on repair services, in particular for micro, small and medium sized businesses providing repair services. In order to avoid additional burdens due to overlapping pre-contractual information requirements, a repairer should be deemed to have fulfilled corresponding information requirements of relevant EU legal acts, where applicable, if the European Repair Information Form has been filled in correctly and provided to the consumer. Information in the European Repair Information Form should be provided to consumers in a clear and comprehensible</p>		

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manner and in line with the accessibility requirements of Directive 2019/882 ³ .		
(8) The consumer's free choice to decide by whom to have its goods repaired should be facilitated by requesting the European Repair Information Form not only from the producer, but also from the seller of the goods concerned or from independent repairers, where applicable. Repairers should provide the European Repair Information Form only where the consumer requests that form and the repairer intends to provide the repair service or it is obliged to repair. A consumer may also choose not to request the European Repair Information Form and to conclude a contract for the provision of repair services with a repairer pursuant to pre-contractual information provided by other means in accordance with Directive 2011/83/EU of the European Parliament and the Council. ⁴		
(9) There are situations in which a repairer incurs costs necessary for providing the information on repair and price included in the European Repair Information Form. For instance, the repairer may need to inspect the goods to be able to determine the defect or type	(9) There are situations in which a repairer incurs costs necessary for providing the information on repair and price included in the European Repair Information Form. For instance, the repairer may need to inspect the goods to be able to determine the defect or type	Consumers should be empowered with complete transparency regarding the costs incurred by the repairer. Therefore, we recommend the inclusion of a provision specifying the necessary details to be included in the repair receipt.

³ Directive 2019/882/EU of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

⁴ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Text with EEA relevance) (OJ L 304, 22.11.2011, p. 64–88).

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<p>of repair that is necessary, including the need for spare parts, and to estimate the repair price. In these cases, a repairer may only request a consumer to pay the costs that are necessary for providing the information included in the European Repair Information Form. In line with the pre-contractual information and other requirements set out in Directive 2011/83/EU, the repairer should inform the consumer about such costs before the consumer requests the provision of the European Repair Information Form. Consumers may refrain from requesting the European Repair Information Form where they consider that the costs for obtaining that form are too high.</p>	<p>of repair that is necessary, including the need for spare parts, and to estimate the repair price. In these cases, a repairer may only request a consumer to pay the costs that are necessary for providing the information included in the European Repair Information Form. In line with the pre-contractual information and other requirements set out in Directive 2011/83/EU, the repairer should inform the consumer about such costs before the consumer requests the provision of the European Repair Information Form. Consumers may refrain from requesting the European Repair Information Form where they consider that the costs for obtaining that form are too high. Once the good has been repaired, the repairer should provide the consumer a receipt specifying the hourly cost of labour, the cost of materials and any shipping costs.</p>	
<p>(10) Repairers should not alter the conditions of repair that they provide in the European Repair Information Form, including on the price for repair, for a certain period of time. This ensures that consumers are given sufficient time to compare different repair offers. In order to safeguard as much as possible the contractual freedom for repairers other than producers of goods for whom an obligation to repair applies, to be able to decide whether to conclude a contract for the provision of repair services at all, repairers should remain free to decide not to conclude such a contract, including in situations</p>		<p>We agree with the prohibition of <i>ius variandi</i> and the need not to bind repairers to sign contracts. However, we acknowledge that contractual freedom may compromise the accuracy of the information provided in the European form. There is a possibility that repairers may have a vested interest in issuing a form with an underestimated quote.</p>

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<p>where they have provided the European Repair Information Form. If a contract for the provision of repair services is concluded based on the European Repair Information Form, the information on conditions of repair and price contained in that form should constitute an integral part of the contract for the provision of repair services, thereby defining the repairer's obligations under that contract. Non-compliance with those contractual obligations is governed by the applicable national law.</p>		
<p>(11) Directive (EU) 2019/771 imposes an obligation on sellers to repair goods in the event of a lack of conformity which existed at the time that the goods were delivered and which becomes apparent within the liability period. Under that Directive, consumers are not entitled to have defects repaired which fall outside that obligation. As a consequence, a large number of defective, but otherwise viable, goods are prematurely discarded. In order to encourage consumers to repair their good in such situations, this Directive should impose an obligation on producers to repair goods to which reparability requirements imposed by Union legal acts apply. That repair obligation should be imposed, upon the consumer's request, on the producers of such goods, since they are the addressees of those reparability requirements. That obligation should apply to producers established both inside and outside the Union in relation to goods placed on the Union market.</p>		<p>The role of manufacturers needs to be strengthened and enhanced in terms of providing comprehensive information about the reparability features of the product and its components. Additionally, manufacturers should guarantee the availability of spare parts or necessary data (such as software and digital content) to repairers at affordable prices and within a reasonable timeframe. This will enable repairers to offer efficient and timely services to consumers.</p> <p>The Commission's approach significantly expands the producer's role in activities usually executed by other market players. Manufacturer - also given the new European Eco-design regulations currently being adopted - should rather be made responsible for the need to prevent reparability through sustainable and quality design and which at the same time strengthens the ability of the end user with respect to the correct use of the product and the</p>

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		need, in general, for responsible consumption. in this sense, the information function of the producer must be strengthened.
(12) Since the obligation to repair imposed on producers under this Directive covers defects that are not due to the non-conformity of the goods with a sales contract, producers may provide repair against a price paid by the consumer, against another kind of consideration, or for free. The charging of a price should encourage producers to develop sustainable business models, including the provision of repair services. Such a price may take into account, for instance, labour costs, costs for spare parts, costs for operating the repair facility and a customary margin. The price for and the conditions of repair should be agreed in a contract between the consumer and the producer and the consumer should remain free to decide whether that price and those conditions are acceptable. The need for such a contract and the competitive pressure from other repairers should encourage producers who are obliged to repair to keep the price acceptable for the consumer. The repair obligation may also be performed for free when the defect is covered by a commercial guarantee, for instance, in relation to guaranteed durability of goods.		<p>Certain goods, such as fridges, are meant to have a longer lifespan than the two-year period covered by the legal warranty. In these cases, it is necessary to extend the right to repair to align with the expected durability of these goods.</p> <p>It is not necessarily true that the competitive pressure from other repairers will automatically lead producers, who now have the obligation to provide repairs, to keep repair prices reasonable for consumers. In particular:</p> <ol style="list-style-type: none"> 1) A post-sale assistance service provided by a major manufacturer may be more cost-effective due to economies of scale, or because small repairers can be affiliated with the manufacturer's service; and 2) Producers may choose to set repair prices excessively high, which would oblige consumers to go to other repairers. <p>The risk is that the only real competition will be between professional repairers and non-professional ones, such as repair cafés, which can lead to unsatisfied consumers, poorly repaired products, or even unsafe products. Additionally, cross-border repair services between two Member States with different national prices or nationally subsidized repair services (if legally possible) may further complicate the situation.</p>

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		<p>Please, see comment on article 5(1) regarding the phrase “another kind of consideration”.</p> <p>The Commission should clarify better the regulatory context, because the proposed text seems to create overlaps between the definitions and the typical functions usually in the hands of different subjects within the supply chain.</p>
(13) Producers may fulfil their obligation to repair by sub-contracting repair, for instance, if the producer does not have the repair infrastructure or if repair can be carried out by a repairer located closer to the consumer, among others where the producer is established outside the Union.		
(14) The requirements laid down in delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council ⁵ , according to which producers should provide access to spare parts, repair and maintenance information or any repair related software tools, firmware or similar auxiliary means, apply. Those requirements ensure the technical feasibility of repair, not only by the producer, but also by		<p>We agree with the idea that manufacturers should make spare parts, software, and other necessary components readily available to repairers. In fact, we support the inclusion of a formal obligation for manufacturers to ensure such availability.</p> <p>The Commission should explicitly and exhaustively include in the text of the directive the right of the consumer to choose a repairer of his choice. This principle is referred to in this</p>

⁵ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (Text with EEA relevance) (OJ L 285, 31.10.2009, p. 10–35).

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other repairers. As a consequence, the consumer can select a repairer of its choice.		recital but cannot be found in the text in an effectively clear manner.
(15) The obligation to repair should also be effective in cases where the producer is established outside the Union. In order to enable consumers to turn to an economic operator established within the Union to perform this obligation, this Directive foresees a sequence of alternative economic operators required to perform the obligation to repair of the producer in such cases. This should enable producers located outside the Union to organise and perform their obligation to repair within the Union.		
(16) To avoid overburdening producers and to ensure they are able to perform their obligation to repair, that obligation should be limited to those products for which and to the extent any reparability requirements are provided for in Union legal acts. Reparability requirements do not oblige producers to repair defective goods, but ensure that goods are repairable. Such reparability requirements can be laid down in relevant Union legal acts. Examples are delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the	(16) To avoid overburdening producers and to ensure they are able to perform their obligation to repair, that obligation should be limited to those products, spare parts and repair information , for which and to the extent any reparability requirements are provided for in Union legal acts. Reparability requirements do not oblige producers to repair defective goods, but ensure that goods are repairable. Such reparability requirements can be laid down in relevant Union legal acts. Examples are delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the	<p>Could the Commission please clarify whether this Recital indicates that there are limitations regarding the goods and components of goods to be repaired (such as vacuum cleaners, where only the motor and hoses are included, while the electricity cord, nozzles, or external case are not), and whether there are limitations on the duration of the repair obligation linked to the description of reparability requirements in the legal acts listed in Annex I? Such clarification is crucial for the proposed modifications to Recital 20.</p> <p>To clarify which products, parts (i.e. possible repairs) and repair information shall be subject to the obligations of the Directive it is suggested to modify the recital as indicated.</p>

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European Parliament and of the Council ⁶ , which create a framework to improve the environmental sustainability of products. This limitation of the obligation to repair ensures that only those goods which are repairable by design are subject to such obligation. Relevant reparability requirements include design requirements enhancing the ability to disassemble the goods and a range of spare parts to be made available for a minimum period. The obligation to repair corresponds to the scope of the reparability requirements, for instance, ecodesign requirements may apply only to certain components of the goods or a specific period of time may be set to make spare parts available. The obligation to repair under this Directive, which allows the consumer to claim repair directly against the producer in the after-sales phase, complements the supply-side related reparability requirements laid down in Regulation [on the Ecodesign Sustainable Products], encouraging consumer demand for repair.	European Parliament and of the Council ⁷ , which create a framework to improve the environmental sustainability of products. This limitation of the obligation to repair ensures that only those goods which are repairable by design are subject to such obligation. Relevant reparability requirements include design requirements enhancing the ability to disassemble the goods and a range of spare parts to be made available for a minimum period. The obligation to repair corresponds to the scope of the reparability requirements, for instance, ecodesign requirements may apply only to certain components of the goods or a specific period of time may be set to make spare parts available. The obligation to repair under this Directive, which allows the consumer to claim repair directly against the producer in the after-sales phase, complements the supply-side related reparability requirements laid down in Regulation [on the Ecodesign Sustainable Products], encouraging consumer demand for repair.	
(17) To ensure legal certainty, this Directive lists in Annex II relevant product groups covered by such reparability requirements under Union legal acts. In order to ensure coherence with future reparability requirements		

⁶ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast).

⁷ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast).

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<p>under Union legal acts, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of in particular adding new product groups to Annex II when new reparability requirements are adopted. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p>		
<p>(18) While this Directive imposes the obligation to repair on the producer, it also facilitates consumer choice of repair services from other repairers. This choice should in particular be facilitated by requesting the European Repair Information Form not only from the producer but also other repairers like the seller or independent repairers or by searching via the online repair platform. As consumers would need to pay for the repair,</p>		<p>It is not necessarily the case that consumers will approach independent repairers in their proximity or the seller before reaching out to producers or their post-sale assistance. This will depend on the repair service set by the producer that can also encompass the affiliation of small repairers.</p> <p>This recital, referred to the next article 4, is not clear in terms of role between manufacturers,</p>

⁸ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 213, 12.5.2016, p. 1).

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they are likely to compare repair opportunities in order to choose the most suitable repair services for their needs. Thus, it is likely they approach independent repairers in their proximity or the seller before reaching out to producers which may for instance be located at a greater distance and for which the price could be higher due to transportation costs.		sellers and repairers. Commission should clarify regulatory context to avoid supply chain overlap. See as well our comments at recital 12.
(19) In line with Directive (EU) 2019/771, a producer should be exempted from the obligation to repair where repair is factually or legally impossible. For example, the producer should not refuse repair for purely economic reasons, such as the costs of spare parts. National law implementing Directive (EU) 2019/771 or the preceding Directive 1999/44/EC of the European Parliament and of the Council ⁹ is already using the criterion whether repair is impossible and national courts are applying it.		The concept of "factually impossible repair" should be elaborated upon to ensure adequate consumer protection and prevent any unwarranted reduction of rights. It is essential to provide a clear definition and specific criteria for determining when a repair is considered factually impossible.
(20) In order to increase the consumer awareness on the availability of repair and thus its likelihood, producers should inform consumers of the existence of that obligation. The information should mention the relevant goods covered by that obligation, together with an explanation that and to what extent repair is provided for those goods, for instance through sub-contractors. That information should be		We believe that the manufacturer must bear information obligations also concerning the most frequent anomalies or failures deriving from the correct use of the good. See also our comment at recital (16).

⁹ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).

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easily accessible to the consumer and provided in a clear and comprehensible manner, without the need for the consumer to request it, and in line with the accessibility requirements of Directive 2019/882. The producer is free to determine the means through which it informs the consumer.		
(21) In order to encourage repair, Member States should ensure that for their territory at least one online platform exists which enables consumers to search for suitable repairers. That platform may be an existing or privately operated platform, if it meets the conditions laid down in this Directive. That platform should include user-friendly and independent comparison tools which assist consumers in assessing and comparing the merits of different repair service providers, thereby incentivising consumers to choose repair instead of buying new goods. While that platform aims at facilitating the search for repair services in business-to-consumer relationships, Member States are free to extend its scope also to include business-to-business relationships as well as community-led repair initiatives.	(21) In order to encourage repair, Member States it should be ensured by European Commission that for their territory at least one online platform exists which enables consumers to search for suitable repairers. That platform may be a new or an existing public or privately operated platform, if it meets the conditions laid down in this Directive. That platform should include user-friendly and independent comparison tools which assist consumers in assessing and comparing the merits of different repair service providers, thereby incentivising consumers to choose repair instead of buying new goods. While that platform aims at facilitating the search for repair services in business-to-consumer relationships, Member States are free to extend its scope also to include business-to-business relationships as well as community-led repair initiatives. However the different repair services business-to-consumer, business-to-business and community-led repair initiatives, should be included in dedicated sections of the platform.	In order for consumers to enjoy more choices to have their products repaired, we believe that it would be important to establish a European-level platform, instead of many at national level. In this way, competition between repairers would be stimulated, with benefits for consumers in terms of prices and quality of service. If the directive was to establish a maximum period for reparation and make shipping insurance a standard requirement, consumers would be protected even if goods are sent abroad. The extension of the scope of the platform to include business-to-business relationships and community-led repair initiatives is welcome. However, the different types of repairers should be kept separate in different sections of the platform. This segregation is necessary to prevent the blending of consumer-related and business-related services, as well as to distinguish between professional (qualified) repair services and simpler repair services (such as "repair cafés") that are limited to repairs consumers can do themselves.

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		See also the comment on article 7.
(22) Member States should ensure that all economic operators that may provide repair services in the Union have easy access to the online platform. Member States should be free to decide which repairers can register on the online platform as long as access to that platform is reasonable and non-discriminatory for all repairers in accordance with Union law. Enabling repairers from one Member State to register on the online platform in another Member State in order to provide repair services in areas that the consumer searched for should support the cross-border provision of repair services. It should be left to Member States' discretion how to populate the online platform, for instance by self-registration or extraction from existing databases with the consent of the repairers, or if registrants should pay a registration fee covering the costs for operating the platform. To guarantee a wide choice of repair services on the online platform, Member States should ensure that access to the online platform is not limited to a specific category of repairers. While national requirements, for instance, on the necessary professional qualifications, continue to apply, Member States should ensure that the online platform is open to all repairers that fulfil those requirements. Member States should also be free to decide whether and to what extent community-led repair initiatives, such as repair	(22) The European Commission should ensure that all economic operators that may provide repair services in the Union have easy access to the online platform. The European Commission should be free to decide which repairers can register on the online platform as long as access to that platform is reasonable and non-discriminatory for all repairers in accordance with Union law. Enabling repairers from one Member State to register on the online platform in another Member State in order to provide repair services in areas that the consumer searched for should support the cross-border provision of repair services. To guarantee a wide choice of repair services on the online platform, the European Commission should ensure that access to the online platform is not limited to a specific category of repairers and is free. To allow consumers to select the repairer from a list of repairers with uniform level of professional characteristics and adherence to certain repair standards, repairers with different professional qualifications should be listed in separated sections of the national platform. While national requirements, for instance, on the necessary professional qualifications, continue to apply, the European Commission should ensure that the online platform is open to all repairers that fulfil those requirements. The European Commission should also be free	The access of the repairers to the platform must involve no economic costs or bureaucratic burdens for the repairers. See also the comment on article 7.

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cafés, may register on the online platform, taking account of safety considerations where relevant. Registration on the online platform should always be possible upon repairers' request, provided they fulfil the applicable requirements to access the online platform.	to decide whether and to what extent community-led repair initiatives, such as repair cafés, may register on the online platform, taking account of safety of the repaired goods and other considerations where relevant. Registration on the online platform should always be possible upon repairers' request, provided they fulfil the applicable requirements to access the online platform.	
(23) Member States should ensure that consumers have easy access to the online platform allowing them to find suitable repair services for their defective goods. The online platform should also be accessible to vulnerable consumers, including persons with disabilities, in accordance with applicable Union law relating to accessibility.		See the comment on article 7.
(24) The search function based on products may refer to the product type or brand. Since repairers cannot know the specific defect before a request to repair has been made, it is sufficient that they provide on the online platform generic information on key elements of repair services to enable consumers to decide whether to repair the good in question, in particular the average time to complete repair, the availability of temporary replacement goods, the place where the consumer hands over the goods for repair and the availability of ancillary services. Repairers should be encouraged to regularly update their information on the online platform. In order to build consumer confidence in the	(24) The search function based on products may refer to the product type or brand. Since repairers cannot know the specific defect before a request to repair has been made, it is sufficient that they provide on the online platform generic information on key elements of repair services to enable consumers to decide whether to repair the good in question, in particular the average time to complete repair, the availability of temporary replacement goods, the place where the consumer hands over the goods for repair and the availability of ancillary services. Repairers should be encouraged to regularly update their information and professional qualifications on the online platform. In order	It is important that repairers are able to demonstrate their claimed professional capabilities and qualifications within the dedicated section of the platform where they are registered. To avoid new burdens to SME's, the aspects related to the inclusion of professional requirements in the Platform should be assessed based on different sectors of activity, in order to ensure that repairers meet the necessary standards to provide quality repair services. See also the comment on article 7.

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repair services available on the online platform, repairers should be able to demonstrate their adherence to certain repair standards.	to build consumer confidence in the repair services available on the online platform, repairers should be able to demonstrate the described professional characteristics and their adherence to certain repair standards. Professional requirements should be assessed based on different sectors of activity.	<p>We recommend establishing a specific timeframe for the right to repair to be exercised, starting from the date of purchase. This would prevent distributors from maintaining agreements with manufacturers for an unduly extended period. Furthermore, it is advisable to include time limits for reparability in all delegated acts to ensure clarity and certainty. Currently, certain delegated acts do not specify such time limits for reparability.</p> <p>The Commission should better clarify the reference to repair standards, bearing in mind that at the national level there are already defined qualification criteria based on the various sectors of activity.</p>
(25) In order to facilitate obtaining the European Repair Information Form, the online platform should include the possibility for consumers to directly request that form from the repairer through the online platform. This possibility should be displayed in a prominent manner on the online platform. To create awareness of national online repair platforms and to facilitate access to such platforms across the Union, Member States should ensure that their online platforms are accessible through relevant national webpages connected to the Single Digital Gateway established by Regulation (EU) 2018/1724 of the European		See the comment on article 7.

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Parliament and of the Council ¹⁰ . To raise consumer awareness of the online platform, Member States should undertake appropriate steps, for instance sign-post the online platform on related national websites or carry out communication campaigns.		
(26) In order to promote sustainable consumption of goods in situations outside the liability of the seller, the online platform should also promote goods subject to refurbishment as an alternative to repair or to buying new goods. To that end, the online platform should include a functionality allowing consumers to find sellers of goods subject to refurbishment or businesses buying defective goods for refurbishment purposes, in particular by enabling a search function per product category. Such sellers of goods subject to refurbishment or purchasers of defective goods for refurbishment should have access to the platform based on the same principles and technical specifications applicable to the repair functionality.	(26) In order to promote sustainable consumption of goods in situations outside the liability of the seller, the online platform should also promote goods subject to refurbishment as an alternative to repair or to buying new goods. To that end, the online platform should include a functionality allowing consumers to find sellers of goods subject to refurbishment or businesses buying defective goods for refurbishment purposes, in particular by enabling a search function per product category. Such sellers of goods subject to refurbishment or purchasers of defective goods for refurbishment should have access to dedicated sections of the platform based on the same principles and technical specifications applicable to the repair functionality.	The sellers of goods subject to refurbishment or businesses buying defective goods for refurbishment purposes should be permitted to register to the platform. However, it is recommended that dedicated sections be created within the platform to facilitate consumer searchability and prevent confusion. This would ensure a clear distinction between repairers and sellers/businesses involved in refurbishment activities. See also the comment on article 7.
(27) The Commission should enable the development of a voluntary European quality standard for repair services, for instance by encouraging and facilitating voluntary cooperation on a standard between businesses,		We have some concerns regarding this new quality standard. While creating a new European quality standard may seem appealing, it presents significant challenges in terms of regulatory complexity, stakeholder involvement,

¹⁰ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

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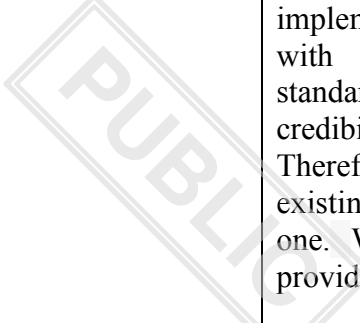
<p>public authorities and other stakeholders or by issuing a standardisation request to the European standardisation organisations. A European standard for repair services could boost consumer trust in repair services across the Union. Such standard could include aspects influencing consumer decisions on repair, such as the time to complete repair, the availability of temporary replacement goods, quality assurances such as a commercial guarantee on repair, and the availability of ancillary services such as removal, installation and transportation offered by repairers.</p>		<p>implementation costs, and potential interference with existing standards. Utilizing existing standards offers the advantages of international credibility, expertise, efficiency, and consensus. Therefore, it is preferable to leverage the existing standards rather than creating a new one. We kindly request the Commission to provide further details on the matter.</p> <p>We are not convinced that this proposal is feasible, as the technical standardization is voluntary and responds to a market need. On the other hand, it seems difficult to establish a comprehensive standard for repair services that encompasses the wide range of repairs. Regardless, we are open to supporting any EU-level initiative that promotes the enhancement and standardization of competences and professional qualifications among repairers. Our aim is to ensure consumer protection from poorly repaired goods by addressing the issue of substandard repair services.</p>
<p>(28) In order to promote repair within the liability of the seller as established in Directive (EU) 2019/771, the harmonised conditions under which the choice between the remedies of repair and replacement can be exercised should be adapted. The principle established in Directive (EU) 2019/771 to use the consideration whether the remedy chosen would impose costs on the seller that are disproportionate as compared to the other remedy, as one of the criteria to determine the</p>	<p>(28) In order to promote repair within the liability of the seller as established in Directive (EU) 2019/771, the harmonised conditions under which the choice between the remedies of repair and replacement can be exercised should be adapted. The principle established in Directive (EU) 2019/771 to use the consideration whether the remedy chosen would impose costs on the seller that are disproportionate as compared to the other remedy, as one of the criteria to determine the</p>	<p>The proposal includes a provision that requires vendors to perform repairs on items covered by the legal warranty, provided that the repair expenses are equivalent to or lower than the cost of replacing the item. Promoting repair over replacement is a commendable step towards decreasing the environmental impact of avoidable waste. However, the proposed obligation would only be applicable in a limited number of practical scenarios. Furthermore, the Commission has not specified the responsible</p>

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<p>applicable remedy, should be maintained. The consumer remains entitled to choose repair over replacement, unless repair would be impossible or it would impose disproportionate costs on the seller as compared to replacement. However, where the costs for replacement are higher than or equal to the costs of repair, the seller should always repair the goods. Hence, the consumer is entitled to choose replacement as a remedy only where it is cheaper than repair. Directive (EU) 2019/771 should therefore be amended accordingly.</p>	<p>applicable remedy, should be maintained. The consumer remains entitled to choose repair over replacement, unless repair would be impossible or it would impose disproportionate costs on the seller as compared to replacement. However, where the costs for replacement are higher than or equal to the costs of repair, the seller should always repair the goods unless the the replacement good is a refurbished one or the seller purchases the defective good for refurbishment. Hence, the consumer is entitled to choose replacement as a remedy only where it is cheaper than repair or under the above circumstances. Directive (EU) 2019/771 should therefore be amended accordingly.</p>	<p>party for determining the cost-effectiveness of repairs compared to replacements, nor has it provided guidance on the methodology to be used for such evaluations.</p> <p>When discussing the amendments to Directive (EU) 2019/771, article 7 (objective requirements for conformity) should also be amended to include durability and reparability among the objective requirements for conformity of goods. In cases where there are ecodesign requirements (see Appliance Regulations) or an average life span for products, these parameters should automatically become binding for the guarantee.</p> <p>The choice to prioritize repair as a remedy is considered consistent with the purpose of this proposal, particularly from an environmental protection perspective. However, the debate among Italian consumer associations highlights a specific concern regarding consumer rights, specifically the fact that the repair remedy entails a period of time during which the consumer cannot use the product as it is in the possession of the repairer. To ensure that the right to repair does not result in indirect harm to the consumer, it is suggested that a maximum time limit be established for repairs, with corresponding compensation for each day of delay. This would involve setting standard maximum times for each product category (e.g., washing machines, dishwashers, cell phones, etc.). To mitigate the negative impacts associated with the non-use of the product during the repair period, it is also</p>
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		<p>suggested that consumers be given the opportunity to request a replacement product to use during the necessary repair period.</p> <p>The proposed modification of this recital aligns with the suggested amendment in Article 12 and aims to support the market for refurbished goods.</p> <p>The Commission shall clarify who should verify whether a repair would be more affordable than a replacement and which methodology to be used.</p>
<p>(29) In order to enable the enforcement of the rules set out in this Directive by means of representative actions, an amendment of Annex I to Directive (EU) 2020/1828 of the European Parliament and of the Council¹⁶ is necessary. For competent authorities designated by their Member States to cooperate and coordinate actions with each other and with the Commission in order to enforce compliance with the rules set out in this Directive, an amendment of the Annex to Regulation 2017/2394 of the European Parliament and of the Council¹⁷ is necessary.</p>		
<p>(30) In order to allow economic operators to adapt, transitional provisions concerning the application of some Articles of this Directive should be introduced. Thus, the obligations to repair and to provide related information on this</p>		

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obligation should apply to contracts for the provision of repair services after [24 months after the entry into force]. The amendment to Directive (EU) 2019/771 should apply only to sales contracts concluded after [24 months after the entry into force] to ensure legal certainty and to provide sellers with sufficient time to adapt to the amended remedies of repair and replacement.		
(31) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ¹⁸ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.		
(32) Promoting the repair of goods purchased by consumers, with a view to contributing to the proper functioning of the internal market while providing for a high level of environmental and consumer protection, cannot be sufficiently achieved by the Member States. Emerging national mandatory rules promoting sustainable consumption by way of repair of defects outside the scope of Directive (EU) 2019/771 are likely to diverge and lead to fragmentation of the internal market. Member		

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<p>States may not amend the fully harmonised rules concerning defects within the liability of the seller set out in Directive (EU) 2019/771. The objective of this Directive can rather, by reason of its scale and effects, better be achieved at Union level through fully harmonised common rules promoting repair within and outside the liability of the seller established in Directive (EU) 2019/771. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.</p>		
<p>(33) This Directive respects the fundamental rights and freedoms and seeks to ensure full respect in particular for Articles 16, 26, 37, 38 and 47 of Charter of Fundamental Rights of the European Union. It contributes to an improvement of the quality of the environment in accordance with Article 37 of the Charter of Fundamental Rights of the European Union by promoting sustainable consumption of goods and thereby reducing negative environmental impacts from premature disposal of viable goods. This Directive ensures full respect for Article 38 on consumer protection by enhancing consumer rights relating to defects that occur or become apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771. It also ensures respect for the</p>		

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freedom to conduct a business in accordance with Article 16 of the Charter of Fundamental Rights of the European Union by safeguarding contractual freedom and encouraging the development of repair services in the internal market. This Directive contributes to the integration of persons with disabilities in accordance with Article 26 the Charter of Fundamental Rights of the European Union by facilitating accessibility to the online platform for persons with disabilities. This Directive seeks to ensure full respect for Article 47 on the right to an effective remedy and to a fair trial through effective means of enforcement.		
Article 1 Subject matter, purpose and scope		
1. This Directive lays down common rules promoting the repair of goods, with a view to contributing to the proper functioning of the internal market, while providing for a high level of consumer and environmental protection.	1. This Directive lays down common rules promoting the repair and refurbishment of goods and the market of refurbishment goods , with a view to contributing to the proper functioning of the internal market, while providing for a high level of consumer and environmental protection.	<p>Including a clarification in Article 1(1) that the goods involved are specifically those listed in Annex II would provide additional clarity and precision to the scope of the directive.</p> <p>It should be noted that the proposal also aims to modify Directive 2019/771 regarding the criteria of prioritizing repairs over replacements.</p> <p>Rationale of the added text: Refurbishment and repair are different. Repair is done on a defective good owned by the user while refurbishment is done on an object that is a waste or a product no more owned by its user, but by the subject that has purchased from the user the product to be</p>

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		refurbished (and then to be resold once refurbished to another user).
2. This Directive shall apply to the repair of goods purchased by consumers in the event of a defect of the goods that occurs or becomes apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771.	2. This Directive shall apply to the repair of goods purchased by consumers in the event of a defect of the goods that occurs or becomes apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771. It shall also apply to the refurbishment of goods and to the market of refurbished goods.	<p>Considering the scope of art. 7 of the current proposal, we would like to ask the Commission to clarify the relationship it's with art. 1 that seems to limit the scope of the Directive to the repair of goods outside the liability following Directive 2019/771 and wider availability of information regarding repair services.</p> <p>Furthermore, the Proposal makes no reference to the protection of sensitive information such as trade secrets or intellectual property (IP), which is crucial to safeguard and promote continued R&D by European companies.</p> <p>Also, while the Proposal limits its scope to products purchased by consumers, Annex II refers to products which would typically be used in business activities, such as large capacity data storage and server products, industrial refrigeration appliances with a direct sales function and welding equipment.</p> <p>It should be clarified, maybe in a recital, that Directive 2019/771 applies to all consumer goods for the period inside the liability of the seller, while this new Directive applies only to the smaller number of products listed in Annex II for the defects that occurs or becomes apparent outside the liability of the seller. In addition, it should be clarified that this Directive applies to</p>

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		the subjects making the refurbishment of goods and selling refurbished goods.
Article 2 Definitions		
For the purpose of this Directive, the following definitions apply:		Refurbishment and repair are both defined in two different definitions in the new Ecodesign Regulation, but not in this Directive, where only “refurbishment” is defined and the definition of “repair” is missing.
1. ‘consumer’ means a consumer as defined in Article 2, point (2) of Directive (EU) 2019/771;		
2. ‘repairer’ means any natural or legal person who, related to that person’s trade, business, craft or profession, provides a repair service, including producers and sellers that provide repair services and repair service providers whether independent or affiliated with such producers or sellers;		We ask consistency with Annex I of the Commission proposal for a regulation of 16 June 2023 laying down <i>Ecodesign</i> requirements for smartphones, mobile phones other than smartphones, cordless phone and slate tablet pursuant “Directive 2009/125/EC of European Parliament and of the Council and amending the Commission Regulation (EU). 2023/826 – where there is a definition of “professional repairer”. In particular, Annex II (<i>Ecodesign</i> requirements) of the aforementioned proposal, for the purpose of professional repairers having access to information on repairs and maintenance, identifies the requirements that the professional repairer must demonstrate (technical skills; professional insurance) as well

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		as methods and times for accessing the information, etc. It's necessary as well consistency between the concept of “professional or qualified repairer” with community-based repair initiatives (e.g. repair café)?
3. ‘seller’ means a seller as defined in Article 2, point (3) of Directive (EU) 2019/771;		
4. ‘producer’ means a manufacturer as defined in Article 2, point (42) of Regulation [on the Ecodesign for Sustainable Products];		
5. ‘authorised representative’ means authorised representative as defined in Article 2, point (43), of Regulation [on the Ecodesign for Sustainable Products];		
6. ‘importer’ means importer as defined in Article 2, point (44), of Regulation [on the Ecodesign for Sustainable Products];		
7. ‘distributor’ means distributor as defined in Article 2, point (45), of Regulation [on the Ecodesign for Sustainable Product];		
8. ‘goods’ means goods as defined in Article 2, point (5), of Directive (EU) 2019/771 except water, gas and electricity;		

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<p>9. 'refurbishment' means refurbishment as defined in Article 2, point (18)₂ of Regulation [on the Ecodesign for Sustainable Products];</p>	<p>PUBLIC</p>	<p>We acknowledge a lack of coherence between the scope of the Directive, as stated in art. 1, and the definitions provided in art. 2.</p> <p>Art. 1 establishes the scope of the directive as "...common rules promoting the repair of goods...", but then art. 2 provides no definition of "repair", defining only "refurbishment". However, refurbishment and repair are two different concepts and refurbishment can be developed without any repair of a non-broken product or on an object that is waste (that has been discarded but not necessarily is non functioning).</p> <p>What about second-hand products? According to the EU ecodesign legislation a second-hand product placed on the EU market (imported in the EU) is not a second hand-product but a new product and therefore is subject to this Directive. While on the contrary what about a second-hand product sold by a producer based in the EU ? Can it be considered a refurbished product due to the definition of refurbishment and therefore subject to the Directive?</p>
<p>10. 'reparability requirements' mean requirements under the Union legal acts listed in Annex II which enable a product to be repaired including requirements to improve its ease of disassembly, access to spare parts, and repair-related information and tools applicable to products or specific components of products;</p>	<p>10. 'reparability requirements' mean requirements under the Union legal acts listed in Annex II which enable a product to be repaired including requirements to improve its ease of disassembly, access to spare parts, and repair-related information and tools applicable to products or specific components of products; manufactures must also ensure that the</p>	<p>This definition needs to be better clarified because it refers to a list of legal acts adopted to implement the Eco-design directive (2019/125/CE) on energy-related products, which mainly refers to the principles and criteria of specific eco-design for each category of goods listed (Annex II). It is important to note that these documents do not provide detailed</p>

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	<p>repair and the replacement of parts of the product under the Union legal acts listed in Annex II respected also the legislation on dangerous substance in order not to affect the human health and the environment and finally the waste recovery process once the good reaches the end life;</p>	<p>information regarding specific reparability requirements, but rather make a general reference to them.</p> <p>According to the scientific approach to Ecodesign, the reparability requirement, usually referred to as “facilitate repairs”, is achieved through a series of sub-criteria that aim to enhance reparability. Facilitate repairs include: arranging and facilitating the disassembly and re-attachment of easily damageable components; designing components in compliance with applicable standards; equipping products with automatic damage diagnostics systems; designing products to facilitate on-site repairs; developing complementary repair tools, materials, and documentation.</p> <p>It is important to reiterate in this legislation that, as happens for production, interventions on damaged goods must not affect the future waste management process.</p>
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	New 11 ‘repair’ means repair as defined in Article 2, point (20), of Regulation [on the <i>Ecodesign for Sustainable Products</i>];	The addition of a clear and comprehensive definition of "repair" is necessary in the proposal, considering its focus on repair. This definition shall incorporate the concept of refurbishment. To ensure coherence within the EU legal framework, it is recommended that the current proposal aligns with the definition of "repair" as stated in Article 2 (20) of the draft Ecodesign for Sustainable Products Regulation (ESPR). The definition provided in the ESPR accurately describes repair as “actions undertaken to restore a defective product or waste to a state where it can fulfill its intended use”. By adopting the same definition, the proposal would maintain consistency and harmonization across relevant legislation, facilitating a clear and unified understanding of the concept of repair.
Article 3 Level of harmonisation		
Member States shall not maintain or introduce in their national law provisions diverging from those laid down in this Directive.		Provisions of Member States more favorable to consumers should be preserved.
Article 4 European Repair Information Form		
1. Member States shall ensure that, before a consumer is bound by a contract for the provision of repair services, the repairer shall provide the consumer, upon request, with the European Repair Information Form set out in		On the European Repair Information Form, we express concerns regarding the functionalities, the responsible parties for its completion, the technical specifications, the content (as mentioned below).

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<p>Annex I on a durable medium within the meaning of Article 2 (11) of Directive 2019/771/EU.</p>		<p>Regarding the contents of the form, we consider there may be some additional elements to consider, depending on the specific needs or regulatory requirements of the Member States (and/or the Authorities) that will enforce the provisions relating to the form.</p> <p>Here are some possible elements to be added:</p> <ul style="list-style-type: none"> • Warranty Terms and Conditions: It could be useful to include information about the warranty offered for the repair service. This may encompass the duration of the warranty, any applicable limitations or exceptions, and the procedures for requesting assistance within the warranty period. • Return and Refund Policies: If the repair service involves upfront costs or a deposit, it would be important to provide consumers with clear information regarding the return and refund policy, in case they decide to cancel the repair or request a refund. • Limitations or Restrictions: In cases where there are specific limitations or restrictions for the repair service, such as exclusions for certain types of defects or instances where repairs may not be feasible, it is important to provide this information clearly and transparently. • Complaint Procedures: Including information on complaint procedures would be beneficial to address situations where consumers are dissatisfied with the repair service or wish to file a
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		<p>complaint. This should encompass details on how to contact the repairer, expected timelines for response and relevant authorities to approach for dispute resolution.</p> <ul style="list-style-type: none"> • Liability for damages or losses: Transparency regarding any limitations of liability for potential damages or losses that may occur during the repair process is essential. This information should be clearly stated to ensure consumer awareness. • Data protection/Privacy: If the repairer collects or processes personal information during the repair process, it is necessary to provide a privacy statement (according to Article 5 of Regulation (EU) 2016/679) explaining how the information will be used, protected and shared. • Authorization or Certification Information: If the repairer has obtained specific authorizations or certifications to perform the repair service, it could be useful to provide such information. By including details about relevant authorizations or certifications, consumer confidence in the service offered can be enhanced. Where applicable, the European Repair Information Form should contain information about technical qualification of the repairer. Indeed, some product groups require authorized repairers as
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		<p>well as testing after a repair is performed (e.g., electrical, and electronic products that fall under the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU). Therefore, it should be recognised that not all repairs can be carried out successfully by providers of repair service, especially independent non-professional repairers.</p> <p>Here some additional observations regarding specific points of Annex I:</p> <p><u>Point 1</u>: Identity and contact details of the repairer providing the repair service : We consider it mandatory to provide consumers with online communication channels and contact information that enable them to contact the repairer and communicate with them swiftly and efficiently. This information is essential both during the selection phase of the service provider (pre-contractual phase) and the contractual phase to facilitate proper contact between the parties. Based on past complaints, it is evident that there is a need for improvement in this area. Additionally, it is important to inform consumers about the languages in which these communication channels are available from the pre-contractual phase, enabling them to make an informed decision when choosing a service provider.</p> <p><u>Point 2</u>: Information on the repair service:</p> <ol style="list-style-type: none"> 1. Delivery and return costs: The form currently suffers from a lack of
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		<p>information regarding the delivery and return costs of the product to be repaired or that has been repaired. This information should be included in the form to ensure transparency and avoid any unexpected costs.</p> <p>2. Type of spare parts used: In accordance with the repair conditions mentioned in Article 4, letter d, it is important to inform the consumer about the type of spare parts used. This may include original parts (in the absence of a different agreement with the consumer) or equivalent parts of corresponding quality to the original parts. Additionally, it should be clarified whether the spare parts provided are of community or non-community origin.</p> <p>3. Liability for damages or losses and insurance coverage: The consumer should be informed whether the repairer has insurance coverage and the extent of coverage provided. This information should be made available to the consumer in advance for their awareness. Specifically, the insurance coverage should include damages that may occur during the repair process (including delivery, shipping/return, and the repair phase) and any damages resulting from inadequate repair.</p> <p>Since traceability is not widely practiced, it is necessary to establish a relationship between the</p>
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		<p>product code, the invoice/receipt at the time of purchase, and any subsequent repair. This would eliminate the current practice of requiring the warranty to be sent and instead automate the process, making it easier for consumers to access repair services or make claims in the future.</p> <p>We ask the Commission to clarify whether the provision regarding the European Repair Information Form actually covers every repair intervention.</p>
2. Repairers other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service.	2. Repairers other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service. Producers provide all the available information necessary for the repairer to complete the form.	<p>Manufacturers should be responsible for providing all the necessary information to repairers to complete the form accurately. The proposal in fact aimed at strengthening the information role of the producer on the characteristics of composition and use of the product towards the end user, to improve his consumption habits.</p> <p>Empowering independent repair networks is crucial for promoting widespread repair practices and ensuring that repair services remain affordable for consumers.</p>
3. The repairer may request the consumer to pay the necessary costs the repairer incurs for providing the information included in the European Repair Information Form.	3. The repairer may request the consumer to pay the necessary costs the repairer incurs for providing the information included in the European Repair Information Form.	Charging a fee to provide the information included in the European Repair Information Form can discourage consumers from seeking multiple repair options and comparing costs, which hampers competition and limits consumer freedom of choice. For these reasons, the provision of the form should be free of charge. However, in cases where a significant

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		assessment of the product is necessary, the professional may inform the consumer that there will be a cost for the evaluation and provide a clear quantification, explicitly reporting the hourly rate. Alternatively, considering the implementation of a maximum allowable cost for the evaluation service could also be explored.
Without prejudice to Directive 2011/83/EU, the repairer shall inform the consumer about the costs referred to in the first subparagraph before the consumer requests the provision of the European Repair Information Form.		
4. The European Repair Information Form shall specify the following conditions of repair in a clear and comprehensible manner:		There should be an obligation, in case the "repair" fails, to return the goods in the same condition as they were given to the repairer and to refund any amount given as an advance payment.
(a) the identity of the repairer;		
(b) the geographical address at which the repairer is established as well as the repairer's telephone number and email address and, if available, other means of online communication which enable the consumer to contact, and communicate with, the repairer quickly and efficiently;		
(c) the good to be repaired;		

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(d) the nature of the defect and the type of repair suggested;		
(e) the price or, if the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated and the maximum price for the repair;		
(f) the estimated time needed to complete the repair;	(f) the estimated maximum time needed to complete the repair;	The field for filling in the estimated time required for the repair, included in the form, is very important. The word "estimated" is highly subjective and can lead to multiple problems
(g) the availability of temporary replacement goods during the time of repair and the costs of temporary replacement, if any, for the consumer;	(g) the availability of free temporary replacement goods during the time of repair and the costs of temporary replacement, if any, for the consumer;	The costs for temporary replacements should not be borne by the consumer. The temporary replacement should be provided as a "courtesy replacement". This approach avoids a situation where the consumer is burdened with the costs of both the repair and the temporary replacement, which could lead to excessive expenses and discourage repairs.
(h) the place where the consumer hands over the goods for repair,	(h) the place where the consumer hands over the goods for repair, the place where goods must be collected if the repaired good is not to be shipped at the place designated by the consumer,	We recommend including the requirement to indicate the "place where goods must be collected" once repaired, if the repaired good is not to be shipped "at the place designated by the consumer".
(i) where applicable, the availability of ancillary services, such as removal, installation and transportation, offered by the repairer and		In the event that the consumer decides not to repair the product after the professional has assessed the faults, the repairer must return the product to the consumer in the same conditions

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the costs of those services, if any, for the consumer;		of use and functionality as it was when it was received for evaluation. Under no circumstances should the repairer return a disassembled or rendered unusable device to the consumer as a result of the evaluation.
5. The repairer shall not alter the conditions of repair specified in the European Repair Information Form for a period of 30 calendar days as from the date on which that form was provided to the consumer, unless the repairer and the consumer have agreed otherwise. If a contract for the provision of repair services is concluded within the 30 day period, the conditions of repair specified in the European Repair Information Form shall constitute an integral part of that contract.		
6. Where the repairer has supplied a complete and accurate European Repair Information Form to the consumer, it shall be deemed to have complied with the following requirements:		
(a) information requirements regarding the main features of the repair service laid down in Article 5(1) point (a), and Article 6(1), point a of Directive 2011/83/EU and Article 22(1), point (j) ₂ of Directive 2006/123/EC;		
(b) information requirements regarding the repairer's identity and contact information laid down in Article 5(1), point (b), and Article (6)(1), points (b) and (c), of Directive		

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2011/83/EU, Article 22(1), point (a), of Directive 2006/123/EC and Article 5(1), points (a), (b) and (c), of Directive 2000/31/EC;		
(c) information requirements regarding the price laid down in Articles 5(1), point (c), and Article 6(1), point (e), of Directive 2011/83/EU and Article 22(1), point (i) and (3), point (a), of Directive 2006/123/EC;		
(d) information requirements regarding the arrangements for the performance and the time to perform the repair service laid down in Articles 5(1), point (d), and Article 6(1), point (g), of Directive 2011/83/EU.		
Article 5 Obligation to repair		Commission should clarify regulatory context to avoid supply chain overlap. See as well our comments at recital 12.
1. Member States shall ensure that upon the consumer's request, the producer shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair.		<p>We believe that manufacturers could be discouraged from providing this right for free, in the cases they are not obliged to by law or contract, as it would certainly drive up the prices of their products, unless there is a clever and clear way to highlight the free provision of repairs.</p> <p>A clarification regarding the relationship between producer and subcontractor in terms of liability (e.g. joint and several liability with the subcontractor) would be appropriate.</p>

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		<p>Producers may indeed repair goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II for free or against a price or another kind of consideration, as long as it complies with EU and national laws. Regarding the possibility of repair against “another kind of consideration”, the producer may buy the defective goods for refurbishment and the consumer may receive a refurbished product similar to the original one without any monetary exchange. Alternatively, the producer may purchase the defective good for refurbishment and offer the consumer a voucher to purchase other products.</p> <p>In any case, since the meaning of “another kind of consideration” is not pointed out in the proposal, we would invite the Commission to provide further clarification, even only in the recitals.</p> <p>In our opinion, the role of manufacturers must be strengthened and enhanced with respect to providing adequate information about the reparability characteristics of the product and its components, also listing the most frequent anomalies or failures deriving from the correct use of the asset. Furthermore, manufacturers should ensure, at affordable prices and within a reasonable time, the availability of the spare parts and data (e.g. through software and digital content) necessary to repairers to provide an efficient service in terms of costs and times. We</p>
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		<p>believe that these functions should be obligatory for manufacturers.</p> <p>On the meaning of “impossible to repair”, see the comment at recital 19.</p> <p>Given the definition of "good" as stated in Article 2(5) of Directive 2019/711, does the right to repair established in this proposed directive also apply to second-hand products sold by producers based in or outside the EU?</p>
2. Where the producer obliged to repair pursuant to paragraph 1 is established outside the Union, its authorised representative in the Union shall perform the obligation of the producer. Where the producer has no authorised representative in the Union, the importer of the good concerned shall perform the obligation of the producer. Where there is no importer, the distributor of the good concerned shall perform the obligation of the producer.		<p>How does it work in the case of online purchases made directly by consumers from producers in third countries (C2B)? How does the duty to provide repair services apply in the EU? Are online marketplace platforms considered distributors bound by the obligation to repair?</p> <p>The distribution of liability in cases where the distributor is the repairer must be clearly and specifically regulated to ensure adequate protection for all parties involved.</p>
3. Producers shall ensure that independent repairers have access to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II.		<p>We share the assumption that repairers should have easy and unburdened access to spare parts and data related to the goods to be repaired. We confirm the need to redefine the reference to delegated acts.</p> <p>To ensure independent repairers have access to necessary resources, it is important to include the provision of CAD drawings of spare parts, allowing for 3D printing or identification of</p>

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		<p>compatible parts from various products or manufacturers. Furthermore, considering standardization and eco-design in the production process is crucial.</p> <p>It's important to inform consumers if a product is no longer being made, so they can know how long spare parts will be available within the 10-year legal requirement. We aspire for spare parts to be available for more than 10 years after the after the production. Additionally, when a product become out of production, we advocate for releasing its spare part designs so that independent repairers can manufacture them using 3D printers, etc.</p> <p>Manufacturers should also provide guidelines on repair. In practical terms, manufacturers should provide downloadable repair manuals.</p> <p>By addressing these issues at the source and promoting sustainable design practices, we can foster a more sustainable and repair-friendly environment.</p>
4. The Commission is empowered to adopt delegated acts in accordance with Article 15 to amend Annex II by updating the list of Union legal acts laying down reparability requirements in the light of legislative developments.		
Article 6 Information on obligation to repair		

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<p>Member States shall ensure that producers inform consumers of their obligation to repair pursuant to Article 5 and provide information on the repair services in an easily accessible, clear and comprehensible manner, for example through the online platform referred to in Article 7.</p>	<p>Member States shall ensure that producers and sellers inform consumers of their obligation to repair pursuant to Articles 5 and 12 and provide as applicable information on the repair services in an easily accessible, clear and comprehensible manner, for example through the online platform referred to in Article 7.</p>	<p>All economic operators (producers and sellers) involved in the implementation of this Directive must clear and comprehensive information to consumers regarding their respective obligations for the repair of goods.</p> <p>With reference to this provision, it is believed that the timing for the adoption of the delegated acts is loose and not specifically scheduled. In order to ensure timely updates and to maintain the relevance of the annex, which defines the objective scope of application, it is deemed appropriate to introduce a system with annual checkpoints. These checkpoints would serve as regular evaluations to review and update the delegated acts as necessary, reflecting any changes in the market or technological advancements.</p> <p>It would be beneficial for consumers to have a price list or reference tariff for repairs and spare parts. This would enable them to assess whether the repairer is overcharging or not.</p> <p>The proposal doesn't regulate the cost of repairs, and we're concerned that they might be too expensive. We suggest making two price lists public: one for spare parts and another for the official repair prices at manufacturer's technical services. Additionally, we request that price information be included by default under the "repair conditions" category).</p>

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Article 7 Online platform for repair and goods subject to refurbishment		See our comments at recitals from 21 to 26.
1. Member States shall ensure that at least one online platform exists for their territory that allows consumers to find repairers. That platform shall:		If an EU platform - i.e. an EU database or repairers and refurbishers - under the control of the Commission has to be created it could a part under the already existing EPREL database, so that information about the energy efficiency and other product information could be complemented for the consumers with the information about where to repair the defective (labelled) products and to purchase refurbished ones. This could facilitate also the market surveillance of this Directive.
(a) include search functions regarding goods, location of repair services, repair conditions, including the time needed to complete the repair, the availability of temporary replacement goods and the place where the consumer hands over the goods for repair, availability and conditions of ancillary services, including removal, installation and transportation, offered by repairers, and applicable European or national quality standards;	(a) include search functions regarding goods, location of repair services, repair conditions, including the time needed to complete the repair, the availability of temporary replacement goods and the place where the consumer hands over the goods for repair, availability and conditions of ancillary services, including removal, installation and transportation, offered by repairers, - professional qualifications and adherence to certain repair standards of the repairers - and applicable European or national quality standards. Professional requirements should be assessed based on different sectors of activity.	To improve the search function, we propose to list the different elements in separate lines and to add the professional qualifications and adherence to certain repair standards of the repairers to the characteristics for the search function. To avoid new burdens to SME's, the aspects related to the inclusion of professional requirements in the Platform should be assessed based on different sectors of activity, in order to ensure that repairers meet the necessary standards to provide quality repair services.

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(b) enable consumers to request the European Repair Information Form via the platform;		
(c) allow for regular updates of contact information and services by repairers;		
(d) allow repairers to indicate their adherence to applicable European or national quality standards;	(d) allow repairers to indicate and update their professional characteristics, repair capability, professional qualifications and adherence to applicable European or national quality standards;	See our concerns on the new “quality standard” at recital 27 and art. 4,1. If in point (c) the update of the contact information and serviced provided is possible, also the update of the adherence to applicable European or national quality standards and other characteristics should be allowed in this point.
(e) enable accessibility through national websites connected to the Single Digital Gateway established by Regulation (EU) 2018/1724.		
(f) ensure accessibility for persons with disabilities		
2. Member States shall ensure that the online platform also includes a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment.	2. Member States shall ensure that the online platform also includes a search function by product category to allow consumers and other users to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment.	
3. Registration on the online platform for repairers, as well as for sellers of goods subject to refurbishment and for purchasers of defective		Registration to the platform should remain voluntary - with the exceptions below - for the following reasons: repair is a voluntary action,

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goods for refurbishment, shall be voluntary. Member States shall determine the access to the platform in accordance with Union law. The use of the online platform shall be free of charge for consumers.		<p>mandatory registration would disadvantage smaller repairers, and it may disproportionately benefit larger repair service providers.</p> <p>Registration for repairs must be free of charge and of bureaucratic burdens.</p> <p>In addition to the suggested improvements, it is advised to specify in this paragraph if there are subjects for whom the registration is mandatory and who are they.</p>
	<p><u>New</u></p> <p>4. The scope of the European online platform may be extended also to include separated and dedicated sections for business-to-business relationships and community-led repair initiatives. The registration shall be voluntary.</p>	<p>This new Article is related to the possibility described in recital (21) to widen the scope of the platform. We consider that this possibility should be included in the articles and not only described in a recital.</p>
Article 8 Enforcement		<p>It is believed that this provision will be implemented by introducing the option to report conduct contrary to the principles of repairability to the Antitrust Authority. This measure is useful, but insufficient to guarantee all users' rights, especially those of modest economic importance. Indeed, there are fears that people will not take action, due to the fact that the costs turn out to be higher than the benefits. This situation could lead to a high risk of uncultivated micro-litigation, due to excessively high costs of access to justice. It is therefore considered appropriate to provide simple and quick remedies for the consumer.</p>

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1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.		
2. The means referred to in paragraph 1 shall include provisions allowing one or more of the following bodies, as determined by national law, to take action under national law before the courts or competent administrative bodies of the Member State to ensure that the national provisions transposing this Directive are applied:		
(a) public bodies or their representatives;		
(b) organisations having a legitimate interest in protecting consumers or the environment;		
(c) professional organisations having a legitimate interest in acting.		
Article 9 Consumer information		
Member States shall take appropriate measures to ensure that information on the rights of consumers under this Directive, and on the means to enforce those rights, are available to consumers, including on national websites connected to the Single Digital Gateway established by Regulation (EU) 2018/1724.		
Article 10		

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Mandatory nature		
1. Unless otherwise provided in this Directive, any contractual agreement which, to the detriment of the consumer, excludes the application of national measures transposing this Directive, derogates from them, or varies their effect, shall not be binding on the consumer.		We believe that including the ineffectiveness of any contractual agreements that violate this proposal is necessary to enforce the effectiveness of the proposal itself.
2. This Directive shall not prevent the repairer from offering to the consumer contractual arrangements that go beyond the protection provided for in this Directive.		
Article 11		
Penalties		
1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to Articles 4, 5 and 6 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective proportionate and dissuasive.		Since it is a directive of maximum harmonisation, we suggest to include published limits (at least in the maximum).
2. Member States shall, by 24 months from the entry into force notify the Commission of the rules and of the measures referred to in paragraph 1 and shall notify it without delay of any subsequent amendment affecting them.		
Article 12		
Amendment to Directive (EU) 2019/771		

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In Article 13(2) of Directive (EU) 2019/771 the following sentence is added:		
‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods in order to bring those goods in conformity.’	‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall upon previous acceptance by the consumer repair the goods in order to bring those goods in conformity, unless the defective good is replaced with a refurbished one with the characteristics and the seller purchases the defective goods for refurbishment.	<p>The proposal favors the repair remedy to align with environmental protection goals. However, concerns have been raised by Italian consumer associations regarding consumer rights, as the repair process can result in a period of unavailability for the consumer. To address this, it is recommended to establish a maximum repair timeframe with compensation for any delays, specific to each product category. Additionally, consumers should have the option to request a substitute product during the repair period to minimize the negative impact of not having access to the item. See as well our comments at recital 28.</p> <p>Following some of the comments from other MS, it is suggested to modify the text to allow, as alternative to the obligation to repair the defective good, to replace the defective good with a refurbished one, or with a new one (replacement) but the seller purchases the defective good for refurbishment. In this second case the seller could be included in the list of the subjects purchasing goods for refurbishment in the national platform.</p>
Article 13 Amendment to Directive (EU) 2020/1828		

Table for comments

In Annex I to Directive (EU) 2020/1828, point 67 is added:		The reference to point 67 of Annex I of Directive (EU) 2020/1828 might be inaccurate, as points 67 and 68 respectively refer to the Digital Market Act and the Digital Service Act.
‘67. Directive (EU) xx/xx of the European Parliament and of the Council of x on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (OJ L xx)’.		See comment above.
Article 14 Amendment to Regulation (EU) 2017/2394		
In the Annex to Regulation (EU) 2017/2394, the following point 27 is added:		
‘27. Directive (EU) xx/xx of the European Parliament and of the Council of x on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (OJ L xx)’.		
Article 15 Exercise of the delegation		
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
2. The power to adopt delegated acts referred to in Article 5(4) shall be conferred on		

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the Commission for a period of six years from [one month after the entry into force of this act]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the six-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.		
3. The delegation of power referred to in Article 5(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.		
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State acting in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.		
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		

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6. A delegated act adopted pursuant to Article 5(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.		
Article 16 Transitional provisions		
1. Article 5(1) and (2) and Article 6 of this Directive shall not apply to contracts for the provision of repair services concluded before [24 months after the entry into force].		
2. Article 12 of this Directive shall not apply to sales contracts concluded before [24 months after the entry into force]		
Article 17 Transposition		
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months from the entry into force] at the latest. They shall immediately inform the Commission thereof.		

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When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.		
Member States shall apply those measures from [24 months from the entry into force].		
2. Member States shall communicate to the Commission the text of the main provisions in national law which they adopt in the field covered by this Directive and the national online platforms on repair and goods subject to refurbishment established in accordance with this Directive.		
		General comments
END	END	END

Written Comments of the Czech Republic on doc. WK 9524/2023 INIT

1. Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

- Generally, the definitions are particularly very important for determining the scope of the proposal. On the one hand the definitions in question should be beneficial, on the other hand we would be careful about defining a generally known term such as “repair”, as otherwise there is a risk of diverging interpretations. We have to bear in mind that we are also modifying SGD. Neither the previous SGD directive (99/44/EC) nor the current one contains the definition of “repair”; the ESPR proposes to define it as *“actions carried out that return a defective product or waste to a condition where it fulfils its intended use”*. If under SGD, there is a defective good, the trader must provide the consumer with a proper remedy (repair or replacement) in order to bring the goods into conformity **with the contract** and not with the intended use. We fear that this definition might have an ill-considered impact on consumer rights. However, if the requirement to define this term prevails, we would prefer to define it in the Directive and not by reference to the provision from ESPR.

2. Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

- In our view, Article 1(2) is unnecessary as it might lead to misunderstanding that the scope is limited only to defects outside the seller’s liability for conformity under SGD. However, looking at Recital 4 (*“promoting repair and reuse in the after-sales phase both within and outside the liability of the seller established by Directive (EU) 2019/771”*) and Article 12, the scope is broader.
- In addition, we are sceptical about the practical benefits of several provisions of the proposal. We would, therefore, propose to delete (at least) Articles 4, 7 and 12 (see our previous written contributions).

3. Regarding the European Repair Information Form, would you be in favour of adding any other conditions in article 4, paragraph 4? If so, which?

- We cannot support any provision that would oblige consumers to pay for information that the trader should (except the A4/4/d) provide under Article 5 or Article 6 of CRD for free.

- The repairer is usually charged a fee for defect identification. The defect identification/diagnostics may be very costly. We doubt that this would incentivise consumers to repair and that they would be willing to pay for more than one form with the risk that the repairer would decide not to repair the product. Czech consumer associations are also uncertain about the benefits of the form as a whole. According to their opinion, under current legislation, the trader has an extensive information obligation before concluding a contract with the consumer. In their view, this arrangement is a sufficient safeguard for consumers, therefore there is no need for further measures. Shall the European Repair Information Form be retained in the proposal, the consumer associations do not recommend adding any other conditions in Article 4(4).
- We prefer deletion of Article 4. However, as a compromise we suggest to introduce a European Repair Information Form set out in Annex I as a voluntary instrument in a similar way as it is in case of Model Instructions on withdrawal set out in Annex I of CRD. We are not in favour of adding any other information requirements in Article 4(4).

4. Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

- Shall the Form be retained in the proposal, we could agree with deducting such price from the price charged for the repair. Nevertheless, we would still prefer the deletion of Article 4.

5. Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

- Each repair responds to different situations and defects. No one-size-fits-all approach can thus apply. We believe that consumers would welcome the repair within the shortest possible time frame, while businesses would demand more flexibility. Therefore, it would be difficult to strike a balance between the interests of consumers and businesses. It should be noted that we are targeting defects that are outside the seller's liability. It means that there is no breach of the contract/law. We believe that the goal of this proposal is to promote the repair of the goods and not to discourage repairers from providing their services.

6. Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

- We would rather support inclusion of provisions clarifying division of liability similarly to Articles 18 of SGD and Article 20 of DCD. On the other hand, it should always be clear who is liable for the repair and thus this provision should remain as simple as possible, so the consumers are easily able to identify the liable party. According to our consumer association, for the sake of certainty, the subject liable should always be the subject who enters into the contract with the consumer. A repair carried out by an independent repairer arranged without the involvement of the producer is of course the liability of the independent repairer.

7. Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

- We agree that there are difficulties in understanding the content of the current wording, and therefore we would prefer to modify the text in line with Article 3(1) of DCD and the used wording “provision of personal data”, unless there is another form of consideration.

8. Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?

- We are rather sceptical about this solution. Recital 13 of the said Regulation clarifies that “*fulfilment service providers, which perform many of the same functions as importers but which **might not always correspond to the traditional definition of importer in Union law***”. The fulfilment service provider takes care of warehousing, packaging and dispatching of a product, but it is not its owner. We are not convinced that this provider should be obliged to repair the goods that they only packed and dispatched for other economic operators. We don’t consider the imposition of such obligation as proportional and justified.

9. Regarding article 6, would you further develop the information to be provided? What information would you include and why?

- No.

10. In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?

- There is no need to oblige Member States to establish such a platform. In our opinion, only encouragement to establish a platform in a recital would be sufficient. Even the Czech consumer associations are not convinced that such platform, (quotation) *“especially when established by the public authority is the efficient solution to help priorities repairs”*. They would prefer the platform to be funded jointly by associations of producers, importers and distributors instead of the public funds. Back to the question at hand, from the options offered, we prefer option (ii) EU level. However, we agree with our consumer associations that this platform should enable consumers primarily to find repairers in their language, near their home as consumers rarely choose to repair the goods outside their domestic market (even region).

11. Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

- As we are sceptical about the obligation to establish a platform, we cannot really express our position here. However, our future attitude would depend on the level at which the platform is established and operated.

12. Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

- We do not support this provision as we have doubts about its applicability and practical functioning. The question is, who is the subject that really decides what remedy is to be provided? Is it a consumer (who can besides claim a significant inconvenience of a repair)? Is it a seller, or is it a manufacturer (who can assess the costs of a repair/replacement)? It is thus doubtful if this amendment leads to different effects than the current regime under SGD. Therefore, we propose deleting this Article.

12.1 Exceptions. If so, which one(s)?

- We do not see any exceptions as a possible compromise.

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

- We are not sure what the control mechanisms would mean in practice. Specifically, whether the control mechanism should also decide whether the good would be brought into conformity by repair or replacement. Should this mechanism be provided by national authorities, business/manufacturers associations or sellers themselves? In this context we would find it useful if the Commission could specify who is actually able

to determine the cost of repair or replacement, whether it's the seller, the manufacturer or somebody else.

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

- We are not in favour of this measure. We wonder how we would prevent traders from becoming trapped in a spiral of unlimited liability period. The national legislation is sufficient as it considers the repair as service under contract for work. In such a case a contractor is liable for defects in the repair or modification made when the consumer takes over the item. If the defects are obvious, they should be claimed immediately. Those which will only become apparent later, can be claimed within a period of up to 24 months. The repairer is also in the position of a trader in relation to items and parts used for the repair, therefore liable for any defects that will become apparent during the 24-month period.

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

- We cannot agree. Member States may maintain or introduce one- or two-year period for the reversal of the burden of proof under Article 11(2) SGD. If there is another rule applicable only for repaired goods, we fear this would result in high complex consumer law that would be hard to comprehend. The rules must be as simple as possible.

13. Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771

- In many cases it could be suitable solution – e.g. the goods, which shall be repaired, are vital for functioning household of the consumer, in which case the immediate replacement would be preferred, especially if the repair on the other hand would require significantly more time. We, therefore, believe that the clear explanation should be provided; if not in the provision, then at least in a corresponding recital. However, as mentioned above, we are against Article 12.

14. Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

- We are against Article 12, one of the many reasons being that the provision is vague and creating legal uncertainty.

15. Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

- We are ambivalent about this possibility at the moment. We reserve the right to submit our comments later during further negotiations.

Paris, le 21 juillet 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits consécutifs à la réunion du groupe de travail « Information et protection du consommateur » du Conseil du 14 juillet 2023 concernant l'initiative Droit à la réparation

Réf. : SGAE/MINUME/2023/441

À la suite de la réunion du groupe de travail « Information et protection du consommateur » qui s'est tenue le 14 juillet 2023, la France souhaite faire part des commentaires écrits suivants.

I. Remarques préliminaires

Les autorités françaises remercient la présidence espagnole pour l'envoi du questionnaire qui permet de structurer les débats et formuler des propositions.

II. Commentaires sur les définitions et le niveau d'harmonisation (articles 1 à 3) – questions 1 et 2

a) Sur l'article 1 (Objet, finalité et champ d'application) – Question 2

En ce qui concerne le champ d'application de la proposition, seriez-vous favorable à ce qu'il soit modifié et le cas échéant de quelle façon ?

Les autorités françaises souhaitent que le champ d'application soit modifié pour clarifier que la directive prévoit à la fois des mesures hors cadre de la garantie légale de conformité et dans le cadre de la garantie légale de conformité.

En effet, comme d'autres délégations l'ont souligné dans leurs commentaires écrits, les autorités françaises estiment que, dans sa rédaction actuelle, le second paragraphe de l'article 1 limite le champ d'application de la directive aux défauts en dehors du régime de la garantie légale de conformité, alors que l'article 12 y est relatif.

b) Sur l'article 2 (Définitions) – Question 1

Considérez-vous qu'il est utile d'inclure une définition du réparateur et celle du réparateur indépendant ? Si oui, quelles définitions en proposeriez-vous ?

Les autorités françaises estiment que la définition de réparateur introduite à l'article 2 de l'initiative est satisfaisante. Définir la notion de réparateur indépendant n'apparaît en revanche pas nécessaire pour

l'économie générale du texte. Elle pourrait par ailleurs s'avérer complexe dans la mesure où les Etats membres peuvent appréhender différemment la notion d'indépendance.

III. Commentaires sur le formulaire européen (article 4) – questions 3 à 5

a) Sur la liste des informations à fournir au formulaire – Question 3

En ce qui concerne le formulaire européen d'information sur la réparation, souhaiteriez-vous ajouter d'autres conditions à l'article 4, paragraphe 4 ? Si oui, lesquelles ?

La liste des informations devant obligatoirement être fournies au devis est suffisamment étoffée et n'appelle pas de commentaire particulier de la part des autorités françaises.

Néanmoins, les autorités françaises voudraient s'assurer que dès lors que le **consommateur aura accepté un devis payant** - et donc aura accepté de régler son coût - alors le professionnel, de son côté, devrait être tenu de fournir la prestation. En effet, il ne serait pas acceptable qu'un professionnel puisse faire payer au consommateur le coût de délivrance du formulaire et que, ensuite, ce professionnel refuse d'effectuer la réparation. A titre d'illustration, en droit français, dès lors qu'un devis est proposé par le professionnel et accepté par le client, il a valeur contractuelle.

Les autorités françaises voudraient vérifier auprès de la Commission européenne que cette logique - tout devis signé vaut contrat - existe au niveau européen. Si tel n'est pas le cas, elles suggèrent un amendement du considérant 8 (en rouge) :

*« (8) The consumer's free choice to decide by whom to have its goods repaired should be facilitated by requesting the European Repair Information Form not only from the producer, but also from the seller of the goods concerned or from independent repairers, where applicable. Repairers should provide the European Repair Information Form only where the consumer requests that form and the repairer **intends commits** to provide the repair service or it is obliged to repair. »*

Par ailleurs, **les autorités françaises considèrent que l'article 4 devrait être modifié pour renforcer l'information du consommateur sur l'existence du formulaire dès lors que le paragraphe 1 de cet article pose le principe qu'il est fourni «sur demande** ». En effet, elles estiment que le fait d'indiquer que le consommateur se verra fournir le devis européen uniquement « *sur demande* » ne trouvera que de rares cas à s'appliquer, comme le soulignent d'autres délégations dans leurs commentaires écrits. Il est en effet peu probable que le consommateur ait une parfaite connaissance de son droit.

Pour renforcer l'usage de ce formulaire, **il conviendrait donc d'assortir cette disposition d'une obligation d'information**, à la charge du réparateur, sur l'existence du devis. Les autorités françaises proposent un amendement de l'article 4, alinéa 2, qui pourrait être ainsi modifié (en rouge) :

*« 2. **Before the consumer is bound by a contract, Repairers whom are willing to repair without being obliged to -when the request isn't under the article 5, shall inform him on the existence of** ~~other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service.~~ »*

Le considérant 8 devrait également être modifié, qui pourrait alors être ainsi rédigé (en rouge) :

*« (8) (...) A consumer may also choose not to request the European Repair Information Form and to conclude a contract for the provision of repair services with a repairer pursuant to pre-contractual information provided by other means in accordance with Directive 2011/83/EU of the European Parliament and the Council. **In any case, the repairer shall have informed the consumer in advance, before the contract is bound, of the existence of this Form and of his right to request/use it or not.** »*

b) Sur la déduction du devis du total de la prestation de réparation – Question 4

Soutiendriez-vous l'idée de déduire le prix facturé à l'acheteur pour la fourniture du formulaire, le cas échéant, lorsque celui-ci choisit de faire réparer le produit ?

Les avantages pour le consommateur d'une telle déduction restent à démontrer. Une telle proposition pourrait entraîner une hausse artificielle des coûts qui serait répercuté par les professionnels sur le montant global de la réparation.

Les autorités françaises sont donc réservées quant à la proposition de déduire le coût du devis du montant total de la prestation.

III. Commentaires sur l'obligation de réparation due par les fabricants (article 5)

a) Sur les délais prévus par la directive (délivrance du devis, durée de la réparation, établissement de la panne) – Question 5

Souhaiteriez-vous introduire des délais butoirs pour le texte ? Par exemple, les délais pour fournir le formulaire, le service de réparation et l'évaluation du défaut. Dans l'affirmative, dans quels cas ? Quel devrait être le délai ?

Les autorités françaises estiment que si, en principe, les parties doivent rester libres d'ajuster le temps nécessaire notamment à la délivrance du devis, il pourrait en aller différemment des cas où le produit en panne est concerné par l'obligation de réparation de l'article 5.

Dans ce cas, le fabricant ou son préposé, est tenu d'une obligation effective de réparation, cette effectivité devrait passer par la réalisation de la réparation dans des délais raisonnables.

Les autorités françaises pourraient soutenir des propositions tendant à encadrer les délais dans lesquels le fabricant ou son réparateur désigné devrait être tenu de fournir tant le devis que la prestation de réparation.

A défaut de parvenir à fixer des délais dans le corps de la directive, les autorités françaises soutiennent une modification rédactionnelle qui pourrait être la suivante (en rouge) :

« 1. Member States shall ensure that upon the consumer's request, the producer shall repair, for free or against a price or another kind of consideration, **within a reasonable time**, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II ».

La notion de « délai raisonnable » dont il est proposé l'introduction, devrait être comprise comme celle prévue au considérant 55 de la directive (UE) 2019/771 relative à la vente de biens, à savoir que la durée raisonnable correspond « **au délai le plus court possible pour effectuer la réparation** ».

b) Sur les responsabilités des différents opérateurs économiques – Question 6

Pensez-vous qu'une clarification sur la répartition de la responsabilité entre les producteurs et leurs sous-traitants devrait être incluse dans les articles ou dans les considérants ? Si oui, comment le clarifieriez-vous ?

Les autorités françaises estiment que les responsables en cascade sont énoncés avec suffisamment de clarté à l'article 5.

En revanche, l'obligation de réparation de l'article 5 ne saurait être satisfaite du seul fait de la présence d'un fabricant ou d'un de ses sous-traitants au sein de l'UE.

Or, ni l'article 5 ni ses considérants correspondants, ne prévoient selon quelles modalités le consommateur devrait mettre en œuvre son droit à réparation (coordonnées du professionnel, proximité géographique du lieu d'utilisation du bien, etc.).

Les autorités françaises proposent ainsi d'ajouter au considérant 15 que le producteur ne saurait remplir son obligation de réparation par le seul fait de désigner un opérateur dans l'Union et qu'il lui appartient de

faire en sorte que le responsable soit connu du consommateur et accessible. Elles considèrent qu'il appartient aux fabricants de mettre en œuvre leur obligation de réparation de façon à ce que les consommateurs puissent en bénéficier sans inconvénients majeurs (coûts trop élevés, durée trop longue, éloignement géographique).

Le considérant 15 pourrait ainsi être modifié (en rouge) :

(15) « The obligation to repair should also be effective in cases where the producer is established outside the Union. In order to enable consumers to turn to an economic operator established within the Union to perform this obligation, this Directive foresees a sequence of alternative economic operators required to perform the obligation to repair of the producer in such cases. This should enable producers located outside the Union to organise and perform their obligation to repair within the Union. **Their obligation to repair cannot be fulfilled by the mere presence of a designated economic operator established within the Union. The producer shall ensure that the consumer benefits from effective repair without undue constraints, particularly in terms of time, costs or place.** »

c) Sur l'obligation d'information (article 6) – Question 7

Il conviendrait de développer l'ambition de l'article 5 (obligation de réparation) par des précisions apportées en précisant l'article 6 (obligation d'information sur l'obligation de réparation) afin que les informations dues par le producteur soient plus nombreuses et plus claires, voir *question 9*.

d) Sur l'inclusion au texte des contrats conclus non pas contre paiement d'un prix mais contre un « *autre type de contrepartie* » - question 7

Croyez-vous que l'expression ou un « autre type de considération » dans le paragraphe 1 de l'article 5 est utile ? Si oui, le garderiez-vous dans l'article ou préférez-vous l'expliquer dans les considérants ? – Question 7

Les autorités françaises sont réservées sur le maintien à l'article 5, paragraphe 1, d'« *un autre type de contrepartie* » et, en tout état de cause, elles veulent interroger la Commission sur des hypothèses concrètes où une réparation de bien serait effectuée en contrepartie de la fourniture de données personnelles.

En outre, elles proposent comme en droit français, la réunion des termes de *prix* et de *contrepartie* sous une unique terminologie « **à titre onéreux** » correspondant à la modification rédactionnelle suivante (en rouge) :

« 1. Member States shall ensure that upon the consumer's request, the producer shall repair, for free or **for valuable consideration** ~~against a price or another kind of consideration~~, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair. »

e) Sur les catégories d'opérateurs tenus à l'obligation de réparer – Question 8

En ce qui concerne la cascade de l'obligation de réparation prévue à l'article 5, seriez-vous favorable à l'inclusion des prestataires de services d'exécution (au sens du règlement UE 2019/1020 sur la surveillance du marché), en tant qu'opérateur économique responsable de la réparation ? Si oui, pourquoi ?

Bien qu'il soit toujours plus bénéfique pour le consommateur de pouvoir se tourner vers de nombreuses catégories de potentiels responsables au sein de l'Union, certains d'entre eux pourraient ne pas être à même de répondre à l'obligation de réparation de l'article 5. Il en va ainsi des prestataires de services d'exécution qui se chargent de tâches avant tout d'ordre logistique.

Les autorités françaises considèrent que les prestataires de services d'exécution de commandes ne sont pas les mieux à même de remplir une obligation de réparation. Ainsi, le choix de les maintenir exclus du champ ne semble pas remettre en question l'objectif poursuivi par le texte.

f) Sur d'autres points relatifs à l'article 5

Les autorités françaises considèrent que les pièces détachées devraient être accessibles à tous les réparateurs, et pas uniquement les réparateurs indépendants, mais aussi aux consommateurs pour faciliter l'accès à la réparation, y compris par les consommateurs eux-mêmes (développement des repair cafés). Elles estiment également que cet accès doit être simple et que le fabricant ne devrait pas poser de condition supplémentaire pour donner accès aux pièces détachées. Aussi, elles proposent l'amendement suivant (en rouge) :

3. Producers shall ensure that *independent* repairers *and consumers* have access, *without any additional condition*, to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II.

En outre, les autorités françaises réitèrent leur proposition d'ajouter un nouvel article pour interdire la pratique des professionnels tendant à restreindre la distribution de leurs pièces détachées voire à empêcher la réparation des biens qu'ils fabriquent hors de leurs circuits agréés. Ces pratiques vont à l'encontre de l'objectif poursuivi par l'article 5 de la directive, et sont susceptibles d'entraîner une fin de vie prématurée des biens.

Cette interdiction compléterait la nouvelle pratique 23i (de l'annexe I de la directive 2005/29) proposée dans la proposition de directive.

Pour cela elles suggèrent l'insertion d'un article entre les articles 5 et 6 de la proposition de directive qui prévoirait ainsi :

1. Toute technique d'un fabricant ou d'un metteur sur le marché ayant pour effet d'empêcher la réparation ou le reconditionnement d'un bien ou d'en limiter la restauration hors de ses circuits agréés devrait être interdite.
2. Toute pratique ayant pour effet de limiter l'accès d'un réparateur aux pièces détachées, aux informations techniques, y compris aux logiciels permettant la réparation des produits devrait être interdite.

Article 5 a.

Prohibition of the part pairing

1. Any technique by a manufacturer or marketer which has the effect to prevent a repair, a refurbishment or limiting the restoration of goods outside its approved channels/circuits should be prohibited.
2. Any practice which has the effect to limit the access of a repairer to spare parts, to technical information, including software enabling the repair of products, should be prohibited.

IV. Commentaires sur l'obligation d'information sur la réparation (article 6) – Question 9

En ce qui concerne l'article 6, pourriez-vous approfondir les informations à fournir ? Quelles informations incluriez-vous et pourquoi ?

Les autorités françaises souhaitent le renforcement de l'obligation d'information due par le producteur selon l'article 6 afin de consolider l'effectivité de l'obligation de réparation de l'article 5 (mentionné *supra*).

Le consommateur devrait en effet pouvoir identifier le professionnel qui se chargera de la réparation et les modalités selon lesquelles il lui confiera son bien. Pour cela, le fabricant devrait être tenu de lui communiquer, sur un support durable, les informations nécessaires.

Les autorités françaises estiment notamment utile que le consommateur ait connaissance des coordonnées du réparateur, de sa qualité, de son lien avec le fabricant (sous-traitant, importateur, distributeur, réparateur indépendant ayant passé un accord avec le producteur, etc.) et des modalités de collecte du bien (savoir s'il doit déposer son bien en mains propres au lieu de réparation ou s'il doit l'envoyer par voie postale).

Outre l'information du consommateur au moment de l'achat, le fabricant devrait également être obligé de tenir à jour ces informations et de les mettre à disposition du consommateur, le cas échéant, sur son site internet.

Enfin, les autorités françaises n'estiment pas pertinent le renvoi à la plateforme prévue à l'article 7 comme moyen pour que les fabricants informent les consommateurs sur les modalités de réparation de chacun de leurs biens. Cette plateforme devrait en effet être réservée aux services de réparation en dehors de l'article 5.

Ainsi, les autorités françaises proposent une reformulation au considérant 20, qui pourrait alors être ainsi rédigé (en rouge) :

*«(20) In order to increase the consumer awareness on the availability of repair and thus its likelihood, producers should inform consumers of the existence of that obligation. The information should mention the relevant goods covered by that obligation, together with an explanation that and to what extent repair is provided for those goods, for instance through sub-contractors. That information should be easily accessible to the consumer and provided in a clear and comprehensible manner, without the need for the consumer to request it, and in line with the accessibility requirements of Directive 2019/882. ~~The producer is free to determine the means through which it informs the consumer.~~ **To this end, the producer shall inform the consumer, on a durable medium, at the latest at the time of the delivery of the goods, of the modalities for the consumer to obtain repair of the goods. In the same manner, the producer keeps this information updated and informs the consumer, without any due delay, of any change. The producer can upload this information on his website.** »*

L'article 6 pourrait également être modifiées ainsi (en rouge)

*« Member States shall ensure that producers inform, **on a durable medium**, consumers of their obligation to repair pursuant to Article 5. ~~and They provide~~ **detailed and updated** information on the repair services in an easily accessible, clear and comprehensible manner, for example through **their website or the online platform referred to in Article 7.** »*

Par ces propositions rédactionnelles, les autorités françaises souhaitent s'assurer d'une plus grande effectivité de la mesure.

V. Commentaires sur la plateforme (article 7)

a) Sur l'instauration d'une plateforme de mise en relation des consommateurs et des réparateurs –

Question 10

En vue de soutenir la croissance du marché de la réparation, ce qui serait plus efficace, selon vous : la mise en place d'une plateforme en ligne i) au niveau national, ii) au niveau de l'UE ; (III) au niveau national avec un point d'accès sur le portail de l'UE. Pourquoi ?

Les autorités françaises réitèrent leur préférence pour une plateforme en ligne au niveau national pour les raisons suivantes :

- La France dispose déjà d'une première expérience satisfaisante de plusieurs sites internet répertoriant des réparateurs dont l'accès est gratuit pour tout consommateur permettant de trouver localement un professionnel de la réparation et dont le fonctionnement est assez proche des exigences actuellement prévues dans la proposition de directive.
- La perspective d'une plateforme européenne risquerait d'éloigner le consommateur du réparateur et de nuire à l'objectif poursuivi par cette initiative (une consommation plus durable et la préservation de l'environnement). En particulier, plus le réparateur est éloigné du consommateur plus le bilan environnemental de la réparation sera négatif.

Les autorités françaises considèrent que la solution d'une plateforme nationale avec un point d'accès sur le portail de l'Union peut s'envisager également.

b) Sur l'inclusion à la plateforme des fonctions de recherche de vendeurs de produits reconditionnés et de reconditionneurs – Question 11

Êtes-vous favorable à la disposition de l'article 7, paragraphe 2, relative à l'inclusion d'une fonction de recherche par catégorie de produits pour trouver des vendeurs de marchandises faisant l'objet d'une remise à neuf et des acheteurs de marchandises défectueuses en vue d'une remise à neuf ? Si ce n'est pas le cas, le soutiendrait-il en tant qu'option volontaire ? Pourquoi ?

L'objectif de la proposition de directive est de favoriser une plus grande durabilité des biens. Pour les autorités françaises, l'idée de mettre en relation des consommateurs et des réparateurs au moyen d'une plateforme en ligne répond pleinement à cet objectif.

En revanche, permettre à de grands opérateurs économiques spécialistes de la vente de biens d'occasion et reconditionnés et à des professionnels du rachat de biens défectueux de figurer sur un tel site, semble plus éloigné de cet objectif. En effet, si le consommateur est incité à revendre son bien ou à en acheter un nouveau, la plateforme pourrait alors être détournée de son objectif initial. L'attrait pour le changement ou la possibilité d'un gain financier pourrait en effet éloigner le consommateur de la recherche de réparateur.

C'est pourquoi les autorités françaises préconisent que la plateforme soit concentrée sur des fonctions de recherche de réparateurs, si possible locaux, afin de répondre au mieux à l'ambition d'une consommation plus durable.

VI. Commentaires sur la primauté faite à la réparation (article 12)

a) Sur la primauté qui serait accordée à la réparation sur le remplacement dans le cadre de la garantie légale de conformité – Question 12

En ce qui concerne l'article 12, appuieriez-vous la disposition telle qu'elle est ? Compléteriez-vous la disposition en incluant d'autres mesures ? Par exemple :

- Exceptions. Dans l'affirmative, lesquelles ? - Question 12.1

Les autorités françaises rappellent leur soutien à la disposition tendant à faire de la réparation le remède prioritaire sur le remplacement lorsque celle-ci n'est pas plus onéreuse tout en l'accompagnant de mesures compensatoires favorables au consommateur qui sont repris dans les réponses aux questions ci-dessous.

- Les mécanismes de contrôle de l'évaluation des coûts de réparation afin qu'il ne soit pas laissé à l'appréciation exclusive du vendeur. Dans l'affirmative, lesquels ? - Question 12.2

Les autorités françaises sont favorables à ce que la réparation ne résulte pas d'un choix arbitraire du vendeur mais que l'évaluation de son coût puisse être tracée (par écrit ou sur un support durable). Elles rappellent ainsi leur souhait de renforcer le dispositif avec l'introduction d'une obligation de transparence pour le professionnel sur l'analyse de la panne ou du défaut et sur la détermination du coût de la réparation. Le professionnel serait ainsi tenu de fournir au consommateur, sur demande, des informations détaillées sur l'analyse de la panne et sur le coût de la réparation.

Elles réitèrent leur proposition d'amendement rédactionnel en ce sens, rappelée dans le cadre de la réponse à la question 12.3 ci-dessous.

- Une période de responsabilité prolongée à partir du moment où le bien réparé est retourné au consommateur. Si oui, quelle devrait être la période d'extension ? - Question 12.3

Les autorités françaises proposent l'ajout d'un allongement d'une durée de 6 mois de la garantie légale lorsque le bien a fait l'objet d'une réparation dans le cadre de la garantie légale de conformité.

A titre d'illustration, elles peuvent rappeler que, en droit national, il est prévu que toute réparation réalisée dans le cadre de la garantie légale de conformité entraîne un allongement de 6 mois de cette période de garantie. Cette mesure, introduite en 2020, vise à favoriser la confiance du consommateur dans la réparation et à l'encourager à opter pour ce remède.

Elles préconisent donc la reprise d'un tel dispositif et réitèrent leur proposition d'amendement de l'article 12 de la directive, révisant l'article 13 de la directive (UE) 2019/771 sur la vente de biens, par l'ajout de deux phrases (en rouge) :

« In Article 13(2) of Directive (EU) 2019/771 the following sentence is added:

'In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods in order to bring those goods in conformity.'

'Any goods repaired under the legal guarantee of conformity benefits from a six-month extension of this guarantee.'

'Upon request from consumers, sellers shall provide detailed information about the product failure analysis and the repair cost evaluation.' »

- Une prolongation de la période de renversement de la charge de la preuve dans la situation susmentionnée. Dans l'affirmative, quelle devrait être la période de prolongation ? - Question 12.4

Les autorités françaises soutiennent la prolongation de la période de présomption d'antériorité du défaut sur cette période de garantie prolongée en cas de réparation afin de faciliter la mise en œuvre de la garantie légale de conformité.

- Voudriez-vous soutenir une disposition reconnaissant expressément que les parties restent libres de convenir d'un remplacement également dans les cas où les coûts de remplacement sont identiques ou supérieurs à ceux de la réparation ? [comme prévu à l'article 21, paragraphe 2, de la directive (UE) 2019/771 sur la vente de marchandises] – Question 13

Pour les autorités françaises, cette proposition va à l'encontre de la proposition de faire de la réparation la primauté puisque cette proposition vide de sa substance l'objectif de l'article 12.

- Pensez-vous qu'il est possible de définir un moyen de déterminer si les coûts de remplacement sont égaux ou supérieurs aux coûts de réparation ? Si oui, comment ? – Question 14

Un tel moyen serait très utile mais les autorités françaises n'ont pas de proposition à formuler à ce stade.

- Jugez-vous utile d'inclure dans la proposition la possibilité pour les États membres de prendre des mesures pour promouvoir les réparations, telles que des fonds, des bons de réparation ou d'autres incitations ? Si oui, quelles mesures ? – Question 15

Les autorités françaises sont très favorables à l'introduction d'un nouvel article permettant aux Etats membres de prendre des mesures au niveau national pour promouvoir la réparation.

A titre d'illustration, en France, une telle mesure existe déjà pour les produits électriques et électroniques. Il s'agit d'un *bonus réparation* instauré fin 2022 et qui permet au consommateur d'obtenir une ristourne sur le montant de la réparation qu'il demande à un professionnel. Les professionnels qui peuvent prétendre à bénéficier du label pour le bonus sont répertoriés sur deux plateformes consultables gratuitement par les consommateurs. Le réparateur se fait rembourser la déduction sur le prix de la facture correspondant au bonus auprès de l'éco-organisme (filiale de responsabilité élargie du producteur) du secteur concerné.

Les autorités françaises considèrent par ailleurs que, afin d'assurer le développement de la réparation, les Etats membres pourraient également être autorisés à prévoir que, dans certains cas, lorsque la durée de réparation excède X jours, le réparateur devrait être en mesure de prêter ou de louer au consommateur un bien de remplacement. Cette disposition, sous réserve d'être aménagée pour les petites entreprises et réparateurs indépendants, permettrait notamment d'éviter que les consommateurs ne rachètent immédiatement un bien neuf après une panne pour éviter d'être privés trop longtemps d'un bien de consommation courante (réfrigérateur ou lave-linge par exemple).

Enfin, les autorités françaises estiment que le texte devrait expliquer plus clairement les conditions dans lesquelles les Etats membres sont autorisés à maintenir leur législation nationale, notamment lorsqu'elle est plus favorable aux consommateurs. A cette fin, elles proposent l'ajout d'un considérant nouveau :

« La présente directive n'empêche pas les États membres d'adopter des dispositions visant à promouvoir la réparation en dehors de son champ, lorsque ces dispositions sont plus favorables aux consommateurs. »

Right to Repair
PRESIDENCY DISCUSSION PAPER
WK 9524/2023 INIT

German delegation's answers/comments:

- 1. Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?**

Yes, definitions would be useful.

A definition of “repair” will have to take into account the difference between a repair within the scope of Article 13 of Directive 2019/771 aimed at conformity with the contractual obligation and a repair outside this scope, where no such contractual standard exists.

“Independent repairer” means any natural or legal person that provides repair services independently from the producers.

- 2. Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?**

We are still in the process of forming an opinion on this question and the scope.

- 3. Regarding the European Repair Information Form, would you be in favour of adding any other conditions in article 4, paragraph 4? If so, which?**

We are still in the process of forming an opinion on this question and Article 4 as a whole.

- 4. Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?**

We are still in the process of forming an opinion on this question and Article 4 as a whole.

- 5. Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?**

We are still in the process of forming an opinion on this question and Article 4 as a whole.

- 6. Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?**

We are not quite sure, if we understand the question correctly. From our understanding, the producer (or the respective person according to Art. 5 para (2)) is always the contractual partner of the consumer. The division of liability between producer and subcontractor is subject to the contract between those and is not relevant for the consumer. Thus, we do not see what exactly should be clarified.

- 7. Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?**

We do not see a reasonable scope of application for a non-monetary consideration, but the expression can as well be maintained. We would welcome an explanation of the expression in the recitals.

- 8. Regarding the cascade of obligation to repair foreseen in the article 5, would you be in favour of including the fulfillment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?**

We are still in the process of forming an opinion on this question and the scope.

- 9. Regarding article 6, would you further develop the information to be provided? What information would you include and why?**

It would be useful to clarify in a recital that the information has to be provided to the consumer at the point of sale at the time of the purchase.

- 10. In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at /i) national level, (ii) EU level; (iii) national level with an access point on the EU portal, Why?**

We are still in the process of forming an opinion on this question.

- 11. Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?**

A search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment is very useful. However, it should be possible, that these search functions are offered by different platform operators (i.e. for repair and refurbishment/purchasers). In case the obligation under the Directive is fulfilled by operating two different platforms, these different platforms should be linked with each other.

- 12. Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:**

One option could be to delete Article 12 altogether, as the additional value seems limited, but are still in the process of forming an opinion on this question.

12.1 Exceptions, if so, which one(s)?

See above

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

See above

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer, if so, what should be the period of the extension?

See above

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

See above.

13. Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771?

Cf. answer to question 12.

14. Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

Cf. answer to question 12.

15. Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

This question needs to be further discussed.

* * *

WK 9524/2023 INIT - PRESIDENCY DISCUSSION PAPER Right to Repair

Greece input

Question 1: Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

We agree with the current wording of article 2 of the proposal.

Question 2: Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

In our point of view the scope of the proposal does not need modification.

Question 3: Regarding the European Repair Information Form, would you be in favor of adding any other conditions in article 4, paragraph 4? If so, which?

Regarding the European Repair Information Form, we do not have any suggestions for the inclusion of further conditions in Article 4 (4).

Question 4: Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

We think that an obligation to pay may be raised by the repairer only in connection with an actual inspection of goods. Our position is that we accept that a repairer may need to inspect the goods in order to be able to determine the defect or type of repair that is necessary, including the need for spare parts, and to estimate the repair price. In such case, the repairer may incur costs for inspecting the goods and providing the information on repair, and, consequently the repairer may request a consumer to pay the costs that are necessary for inspecting such goods. Recital 9 implies that apart from inspection there might be other situations in which a repairer incurs costs for providing the information. However, we cannot foresee any other situations.

In any way, we agree that the price charged to consumer should be deducted in case consumer assigns the repair of the good to the repairer.

Question 5: Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

We agree with the current wording of the proposal: *“Without prejudice to Directive 2011/83/EU, the repairer shall inform the consumer about the costs referred to in the first subparagraph **before the consumer** requests the provision of the European Repair Information Form”*.

As for the rest of the information, we don’t think that it is easy to estimate the time required by repairers to provide the completed Form with either the repair service or the assessment of the defect, as this may depend on a whole load of factors which cannot always be predicted beforehand (e.g. prior workload).

Question 6: Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

We think that the liability as established in Directive (EU) 2019/771 is quite effective.

Question 7: Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

We think that the expression “another kind of consideration” could be kept in order to cover situations that a voucher is used in the context of the offering of repair services. However, it should be better explained in the respective recitals by providing concrete examples.

Question 8: Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfillment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?

Yes, are rather in favor of including service providers as responsible for the repair, in order for consumers to be able to exercise their right more easily.

Moreover, when it comes to Art. 5, we have the following remarks to make:

Producer means a manufacturer as defined in Article 2, point 42 of the Ecodesign Regulation. The definition of ‘manufacturer’ therein includes “*any natural or legal person who manufactures a product or who has such a product designed or manufactured, and markets that product under its name or trademark or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product*”.

Consequently, the definition of producer in this Art. 5 par.1 does not include the authorised representative of the producer as in Art.5 par.2. In our view, the obligation to repair should be extended to such a person also, in order for consumers to be able to exercise their rights effectively.

We already face similar issues regarding the Pan-European commercial guarantee given by manufacturers based in other MS in case of (legal) parallel imports within the EU. Consumers that live in a country other than the MS of the person that manufactures the goods are denied the commercial guarantee by the authorised representative (who might be a subsidiary of the manufacturer) under the pretext that such representative is neither the manufacturer nor the importer of the good in that MS. Such practice is most probably contrary to competition law (e.g. Zanussi case), but we think that it is appropriate to include an equivalent provision regarding the obligation of authorised representatives to repair in this Article.

Our suggestion is the following drafting:

*“Member States shall ensure that upon the consumer’s request, the producer **and/or its authorised representative** shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are*

*provided for by Union legal acts as listed in Annex II. The producer **and/or its authorised representative** shall not be obliged to repair such goods where repair is impossible. The producer **and/or its authorised representative** may sub-contract repair in order to fulfil its obligation to repair”.*

Question 9: Regarding article 6, would you further develop the information to be provided? What information would you include and why?

We think that article 6 does not need to be changed.

Question 10: In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?

In our point of view the online platform would be more effective established at national level with an access point on the EU portal, in a similar manner to how the platform for online dispute resolution also works.

Question 11: Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

We support the provision in article 7 (2).

Question 12: Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

12.1 Exceptions. If so, which one(s)?

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

We agree with the provision in article 12 as it stands.

Question 13: Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771).

We think that such provision should not be included, although we understand that in the context of the freedom of contracts parties will be able to agree for replacement.

Question 14: Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

No, we do not think that it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair. It is a factual issue that has to be assessed on an ad hoc basis.

Question 15: Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

It could be beneficial for consumers to include in the proposal the possibility for MS (on a voluntary basis) to take measures to promote repairs, such as via the offering of repair vouchers.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 - 2023/0083 (COD)

Italian comments on the Presidency Flash of 7.7.23 (WK 9524/2023 INIT)

1.- Do you consider it useful to include a definition of "repair" and "independent repairer"? If so, how would you define them?

The addition of a clear and comprehensive definition of "repair" is necessary in the proposal, considering its focus on repair. This definition shall incorporate the concept of refurbishment. To ensure coherence within the EU legal framework, it is recommended that the current proposal aligns with the definition of "repair" as stated in Article 2 (20) of the draft Ecodesign for Sustainable Products Regulation (ESPR). The definition provided in the ESPR accurately describes repair as "actions undertaken to restore a defective product or waste to a state where it can fulfill its intended use". By adopting the same definition, the proposal would maintain consistency and harmonization across relevant legislation, facilitating a clear and unified understanding of the concept of repair.

Therefore, the following sentence shall be introduced:

'repair' means repair as defined in Article 2, point (20), of Regulation [on the Ecodesign for Sustainable Products]¹.

Regarding the possibility of introducing a definition of "independent repairer," the proposal already includes this figure within the definition of "repairer" in Article 2(2) and the key point remains that repairers should have access to information and spare parts. Specific requirements for accessing spare parts and repair information are listed in Annex II. These requirements apply to all professional repairers, and spare parts and repair information should be freely available on the manufacturer's website to consumers and repairers.

2.- Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

Yes, we would be in favour of modifying it.

As the concept of "refurbished good" is different from the one of "repaired good", we suggest to expressly include the former in the scope of the directive, even changing the title of the proposal. Considering the scope of art. 7 of the current proposal, we would like to ask the Commission to clarify the relationship it's with art. 1 that seems to limit the scope of the Directive to the repair of goods outside the liability following Directive 2019/771 and wider availability of information regarding repair services.

Furthermore, the Proposal makes no reference to the protection of sensitive information such as trade secrets or intellectual property (IP), which is crucial to safeguard and promote continued R&D by European companies. Also, while the Proposal limits its scope to products purchased by consumers, Annex II refers to products which would typically be used in business activities, such as large capacity data storage and server products, industrial refrigeration appliances with a direct sales function and welding equipment. A clear distinction must be made between B2C and B2B relationships.

3.- Regarding the European Repair Information Form, would you be in favor of adding any other conditions in article 4, paragraph 4? If so, which?

Regarding the European Repair Information Form, we would be in favor of adding other conditions in article 4. In particular, we express concerns regarding the functionalities, the responsible parties for its completion, the technical specifications, the content (as mentioned below).

Regarding the contents of the form, we consider there may be some additional elements to consider, depending on the specific needs or regulatory requirements of the Member States (and/or the Authorities) that will enforce the provisions relating to the form.

Here are some possible elements to be added:

- **Warranty Terms and Conditions:** It could be useful to include information about the warranty offered for the repair service. This may encompass the duration of the warranty, any applicable limitations or exceptions, and the procedures for requesting assistance within the warranty period.

¹ Article 2, point (20), of Regulation [on the Ecodesign for Sustainable Products]: "'repair' means returning a defective product or waste to a condition where it fulfils its intended use;"

- **Return and Refund Policies:** If the repair service involves upfront costs or a deposit, it would be important to provide consumers with clear information regarding the return and refund policy, in case they decide to cancel the repair or request a refund.
- **Limitations or Restrictions:** In cases where there are specific limitations or restrictions for the repair service, such as exclusions for certain types of defects or instances where repairs may not be feasible, it is important to provide this information clearly and transparently.
- **Complaint Procedures:** Including information on complaint procedures would be beneficial to address situations where consumers are dissatisfied with the repair service or wish to file a complaint. This should encompass details on how to contact the repairer, expected timelines for response and relevant authorities to approach for dispute resolution.
- **Liability for damages or losses:** Transparency regarding any limitations of liability for potential damages or losses that may occur during the repair process is essential. This information should be clearly stated to ensure consumer awareness.
- **Data protection/Privacy:** If the repairer collects or processes personal information during the repair process, it is necessary to provide a privacy statement (according to Article 5 of Regulation (EU) 2016/679) explaining how the information will be used, protected and shared;
- **Authorization or Certification Information:** If the repairer has obtained specific authorizations or certifications to perform the repair service, it could be useful to provide such information. By including details about relevant authorizations or certifications, consumer confidence in the service offered can be enhanced. Where applicable, the European Repair Information Form should contain information about technical qualification of the repairer. Indeed, some product groups require authorized repairers as well as testing after a repair is performed (e.g., electrical, and electronic products that fall under the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU). Therefore, it should be recognised that not all repairs can be carried out successfully by providers of repair service, especially independent non-professional repairers.

4.- Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

No, because we propose to delete art. 4(3). Charging a fee to provide the information included in the European Repair Information Form can discourage consumers from seeking multiple repair options and comparing costs, which hampers competition and limits consumer freedom of choice. For these reasons, the provision of the form should be free of charge. However, in cases where a significant assessment of the product is necessary, the professional may inform the consumer that there will be a cost for the evaluation and provide a clear quantification, explicitly reporting the hourly rate. Alternatively, considering the implementation of a maximum allowable cost for the evaluation service could also be explored.

5.- Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

Yes, we would support introducing time limits.

We recommend establishing a specific timeframe for the right to repair to be exercised, starting from the date of purchase. This would prevent distributors from maintaining agreements with manufacturers for an unduly extended period. Furthermore, it is advisable to include time limits for reparability in all delegated acts to ensure clarity and certainty. Currently, certain delegated acts do not specify such time limits for reparability.

To ensure that the right to repair does not result in indirect harm to the consumer, we suggest that a maximum time limit be established for repairs, with corresponding compensation for each day of delay. This would involve setting standard maximum times for each product category (e.g., washing machines, dishwashers, cell phones, etc.).

6.- Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

Yes, a clarification regarding the relationship between producer and subcontractor in terms of liability (e.g. joint and several liability with the subcontractor) would be appropriate.

The proposal, when the producer collaborates with a subcontractor for the repair, should include in the European Repair Information Form a requirement for informing consumers about subcontractor involvement

in repairs. This requirement should apply to both producers and independent professional repairers who may collaborate with subcontractors.

7.- Do you believe the expression "or another kind of consideration" in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

Yes, we believe it is useful and we would prefer to explain it in the recitals.

Producers may indeed repair goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II for free or against a price or another kind of consideration, as long as it complies with EU and national laws. Regarding the possibility of repair against "another kind of consideration", the producer may buy the defective goods for refurbishment and the consumer may receive a refurbished product similar to the original one without any monetary exchange. Alternatively, the producer may purchase the defective good for refurbishment and offer the consumer a voucher to purchase other products. In any case, since the meaning of "another kind of consideration" is not pointed out in the proposal, we would invite the Commission to provide further clarification, even only in the recitals.

8.- Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfillment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020²), as an economic operator responsible for the repair? If so, why?

It should be noted that the goods within the scope of the Directive are limited to those specified in the legal acts listed in Annex II, as well as the spare parts - and therefore the defects subject to the repair obligations - , and the requirements on the access to repair information. The legal acts in Annex II refer to the obligation of manufacturers, authorised representatives or importers in a cascade defined today in the framework Directive 2009/125/EC and tomorrow in the new ESPR Regulations. Therefore, the inclusion of the fulfillment service providers in the cascade of obligation to repair in Art. 5 could be done only if they perform the same functions as importers (see Recital 13 of Market Surveillance Regulation EU 2019/1020) and relevant for the repair of goods. These functions should be described in the Directive and linked to the fulfillment service provider (whose definition would consequently have to be added too, as indicated in art. 2 of Market Surveillance Regulation EU 2019/1020) to legally justify the inclusion of these subjects and their obligations towards the repair of goods in Art. 5.

REF. Market Surveillance Regulation EU 2019/1020:

Art.2(11) 'fulfilment service provider' means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding postal services as defined in point 1 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council, parcel delivery services as defined in point 2 of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council, and any other postal services or freight transport services;

Recital (13): The challenges of the global market and increasingly complex supply chains, as well as the increase of products that are offered for sale online to end users within the Union, call for the strengthening of enforcement measures, to ensure the safety of consumers. Furthermore, practical experience of market surveillance has shown that such supply chains sometimes involve economic operators whose novel form means that they do not fit easily into the traditional supply chains according to the existing legal framework. Such is the case, in particular, **with fulfillment service providers, which perform many of the same functions as importers but which might not always correspond to the traditional definition of importer in Union law**. In order to ensure that market surveillance authorities can carry out their responsibilities effectively and to avoid a gap in the enforcement system, it is appropriate to include fulfillment service providers within the list of economic operators against whom it is possible for market surveillance authorities to take enforcement measures. By including fulfillment service providers within the scope of this Regulation, market surveillance

² Art. 3(11) Market Surveillance Regulation EU 2019/1020: 'fulfilment service provider' means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding postal services as defined in point 1 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council , parcel delivery services as defined in point 2 of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council, and any other postal services or freight transport services;

authorities will be better able to deal with new forms of economic activity in order to ensure the safety of consumers and the smooth functioning of the internal market, including where the economic operator acts both as an importer as regards certain products and as a fulfillment service provider as regards other products.

9.- Regarding article 6, would you further develop the information to be provided? What information would you include and why?

Yes. It would be beneficial for consumers to have a price list or reference tariff for repairs and spare parts. This would enable them to assess whether the repairer is overcharging or not. Additionally, we request that price information be included by default under the "repair conditions" category).

10.- In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?

(ii) EU level.

In order for consumers to enjoy more choices to have their products repaired, we believe that it would be important to establish a European-level platform, instead of many at national level. In this way, competition between repairers would be stimulated, with benefits for consumers in terms of prices and quality of service. Moreover, having an EU level platform is more consistent with the maximum harmonization approach of the proposal and aligns better with the need for EU action from a subsidiarity perspective.

11.- Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment?

If not, would you support it as a voluntary option? Why?

Yes, we do support this inclusion as it has the potential to yield positive effects for the repair market, both in terms of demand and supply. Furthermore, the different actors (professional repairers, other type of community-repairers, refurbishers, seller of refurbished goods) should be stored in separate sections of the platform.

12.- Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

-12.1 Exceptions. If so, which one(s)?

-12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

-12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

-12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

Regarding art. 12, we would not support the provision as it stands.

The proposal favors the repair remedy to align with environmental protection goals. However, concerns have been raised by Italian consumer associations regarding consumer rights, as the repair process can result in a period of unavailability for the consumer. To address this, it is recommended to establish a maximum repair timeframe with compensation for any delays, specific to each product category. Additionally, consumers should have the option to request a substitute product during the repair period to minimize the negative impact of not having access to the item.

To ensure that the right to repair does not result in indirect harm to the consumer, we suggest that a maximum time limit be established for repairs, with corresponding compensation for each day of delay. This would involve setting standard maximum times for each product category (e.g., washing machines, dishwashers, cell phones, etc.). To mitigate the negative impacts associated with the non-use of the product during the repair

period, we also suggest that consumers be given the opportunity to request a replacement product to use during the necessary repair period.

An extended liability period of two additional years, starting from the moment the repaired good is returned to the consumer, could be included, in order to put the repaired/refurbished good on a level playing field with a new one.

Simultaneously, the reversal period of the burden of proof could also be extended for the same duration of two additional years.

We also add that registration to the platform should remain voluntary - with some exceptions to be assessed - for the following reasons: repair is a voluntary action, mandatory registration would disadvantage smaller repairers, and it may disproportionately benefit larger repair service providers.

13.- Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771

Currently, the Sales of Goods Directive provides the consumer with the choice between repair and replacement. Giving consumers choice is one of the fundamental objectives of EU consumer law. Accordingly, rather than making repair the only primary remedy, other measures to promote repairs could be adopted, while preserving consumers' choice. For instance, replacement could be excluded in case of minor defects that do not impact the overall functionality or aesthetics of the product. Moreover, were consumers provided with a free temporary replacement product, they would be more inclined to opt for repair rather than replacement. Temporary replacement good shall have an equivalent functionality. Furthermore, it would be important to ensure the transferability of the guarantees on consumer goods, particularly to encourage the growth of the second-hand market and, consequently, enhance the durability of goods. It is worth noting that some sectoral studies have shown that extending the duration of legal guarantees from two to five years would lead to a mere 1-2.9% increase in prices. Such an extension would complement the proposed measures and align with the objectives of the current Directive.

14.- Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

No, because the costs for replacement and repair depend on the costs-structure of the producer, the repairer or the other figures mentioned in the proposal. However, what could be done is specify who is the responsible party for determining the cost-effectiveness of repairs compared to replacements and provide guidance on the methodology to be used for such evaluations.

That being said, if we were to define a methodology to determine if the costs for replacement are equal to or greater than the costs for repair, obtaining accurate pricing information for replacement costs in repairs is essential. This data can be sourced from market research companies or consumer associations, but it is important to consider the associated costs and legal implications. Setting a benchmark maximum price for repairs based on averages can be disadvantageous for both cheaper and top brand models.

15.- Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

Yes, national measures could indeed offer economic incentives for repairs, such as immediate discounts or tax deductions. However, it is important to carefully compare the environmental impact of these incentives with the effects of promoting the purchase of more efficient models. This comparison helps determine whether replacing a less advanced model with a more efficient one is more environmentally beneficial than repairing the less efficient model. Simply prioritizing repairs may not always be the most environmentally sound option.

The European approach to repairability should not be based only on obligations on companies. Fostering repairability will only be successful with a smart mix of measures (e.g., legislative, and non-legislative, product or information related) including those that motivate consumers to choose repair and traders to offer repair during and beyond guarantee periods as well as those fostering skilled labour. To this end, incentives are necessary: both businesses and consumers should benefit from incentives, including financial, that make repair more affordable.

QUESTIONS	MS COMMENTS
<p>Question 1: Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?</p>	<p>EL We agree with the current wording of article 2 of the proposal.</p> <p>HR HR is of the opinion that there is no need for including the definition of “repair” into the Proposal since the institute of repair is well known in EU acquis and the national legislation of the Member States. However, we would find useful to clarify the institute of “refurbishment” (Article 2, point 9 of the Proposal) and explain more its distinction with the “repair”.</p> <p>Regarding the definition of “independent repairer”, HR considers necessary to clarify notion of the “independent repairer” mentioned in Article 5 paragraph 3 in relation with the definition of the “repairer” in Article 2 paragraph 2. Therefore, we would like the clarification why does Article 5 paragraph 3 includes only independent repairers and not repairers as defined in Article 2 paragraph 2. If the intention of EC was to make distinction between those two repairers, then HR considers important to clarify it and include the notion of the “independent repair” into the definitions in Article 2 paragraph 2.</p> <p>SK We support the introduction of a definition of "repair".</p> <p>IT The addition of a clear and comprehensive definition of "repair" is necessary in the proposal, considering its focus on repair. This definition shall incorporate the concept of refurbishment. To ensure coherence within the EU legal framework, it is recommended that the current proposal aligns with the definition of "repair" as stated in Article 2 (20) of the draft Ecodesign for Sustainable Products Regulation (ESPR). The definition provided in the ESPR accurately describes repair as “actions undertaken to restore a defective product or waste to a state where it can fulfill its intended use”. By adopting the same definition, the proposal would maintain consistency and harmonization across relevant legislation, facilitating a clear and unified understanding of the concept of repair. Therefore, the following sentence shall be introduced:</p>

'repair' means repair as defined in Article 2, point (20), of Regulation [on the Ecodesign for Sustainable Products]¹.

Regarding the possibility of introducing a definition of "independent repairer," the proposal already includes this figure within the definition of "repairer" in Article 2(2) and the key point remains that repairers should have access to information and spare parts. Specific requirements for accessing spare parts and repair information are listed in Annex II. These requirements apply to all professional repairers, and spare parts and repair information should be freely available on the manufacturer's website to consumers and repairers.

¹ Article 2, point (20), of Regulation [on the Ecodesign for Sustainable Products]: "repair' means returning a defective product or waste to a condition where it fulfils its intended use;"

SI

Yes, we consider it useful to include a definition of "repair" in this Directive, since also "refurbishment" is defined. We wonder what is the ratio behind the decision to only include definition of refurbishment in the proposal since both terms are defined in the Ecodesign for Sustainable Products Regulation proposal? We have statutory authorizes services provides which include repairers for certain types of goods. It would be sensible to define independent repairers if certain obligations of the proposal differ from the obligations regarding other repairers or apply only to them. Secondly, we must ensure access of independent repairman to replacement part and information if we want an effective competition and a growth in repair service market.

FR

The French authorities consider that the definition of repairer introduced in Article 2 of the initiative is suitable. However, defining the concept of independent repairer does not seem necessary for the general scheme of the text. Moreover, it could turn out to be complex since Member States may have different approaches to the concept of independence.

DE

Yes, definitions would be useful.

	<p>A definition of “repair” will have to take into account the difference between a repair within the scope of Article 13 of Directive 2019/771 aimed at conformity with the contractual obligation and a repair outside this scope, where no such contractual standard exists.</p> <p>“Independent repairer” means any natural or legal person that provides repair services independently from the producers.</p> <p>FI</p> <p>For the moment, FI does not deem it necessary to include any additional definitions in the proposal.</p> <p>CZ</p> <p>Generally, the definitions are particularly very important for determining the scope of the proposal. On the one hand the definitions in question should be beneficial, on the other hand we would be careful about defining a generally known term such as “repair”, as otherwise there is a risk of diverging interpretations. We have to bear in mind that we are also modifying SGD. Neither the previous SGD directive (99/44/EC) nor the current one contains the definition of “repair”; the ESPR proposes to define it as “<i>actions carried out that return a defective product or waste to a condition where it fulfils its intended use</i>”. If under SGD, there is a defective good, the trader must provide the consumer with a proper remedy (repair or replacement) in order to bring the goods into conformity with the contract and not with the intended use. We fear that this definition might have an ill-considered impact on consumer rights. However, if the requirement to define this term prevails, we would prefer to define it in the Directive and not by reference to the provision from ESPR.</p> <p>LV</p> <p>We believe that it is not necessary to include the proposed definitions, because the definition of “<i>repairer</i>” already exists in Article 2 of the Proposal. We do not see any added value for the concept “<i>independent repairer</i>”, because the existing definition of “<i>repairer</i>” already says that it is “<i>any natural or legal person</i>”, while the concept of “<i>repair</i>” basically is already clear from the context, i.e. to repair a damaged item. In addition, it should be noted that the definition of “<i>repair</i>” already exists in Article 2 of the proposal on Ecodesign regulation.</p>
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EE

We think that the inclusion of these definitions might be considered.

Term “repair”

To us it seems that the term “repair” has a major impact on the scope of the Directive. If the aim is to promote the internal market and harmonise different rules, it may be useful to define the term “repair”. This would ensure that “repair” is understood in the same way in every Member State.

We are not sure whether the term “repair” has been defined in any currently valid European Union legal acts. However, Article 2 point 20 of the Council's general approach of the Regulation on the Ecodesign for Sustainable Products determines “repair” as actions carried out that return a defective product or waste to a condition where it fulfils its intended use. It might be worth considering whether this definition could also apply to this Directive.

Term “independent repairer”

The term “independent repairer” has been defined in Article 3 point 47 of Regulation 2018/858. Although this provision is about vehicles, we could perhaps still use this as an example.

LU

Luxembourg considers that a definition of “repair” is essential in order to tackle properly the scope of the text. Using the definition in the Ecodesign Regulation would ensure consistency between the two pieces of legislation.

As far as independent repairer, we are not convinced of the added value of such a definition. We believe that the article 2, point 4 already covers the notion of independent repairer when it distinguishes between repairers who are independent or linked to producers or sellers. Moreover, this notion is only used in Article 5(3), which states that producers shall ensure that independent repairers have access to spare parts and to repair information and tools. Furthermore, we believe that this obligation should not be integrated within the present text, but should be covered by the Acts referred to in the Annex II in order not to risk creating a double (possibly different) obligation to provide access to spare parts and to repair information and tools both in Ecodesign sustainable product Regulation (ESPR) and its implementing acts as well as in the Right to Repair Directive (R2R).

For purely formal and technical drafting reasons, we would also suggest adding the definition of durable medium in order to simplify the wording of Article 4(1).

DK

We find it important to define repair because it would define the scope of the directive and clarify the rules. The differentiation between repair, remanufacture and refurbish means that it is important to clearly specify when something is within the scope of the directive.

We recognize that the definition is not needed for the measures in article 5 about the obligation to repair for targeted products and targeted defects. However, in our opinion it remains highly relevant to have a clear definition for other measures in the directive (e.g. the repair form in article 4 and the online platform in article 7).

We would strongly recommend using the definition from the Proposal for the Ecodesign Regulation, which will ensure coherence between the two pieces of legislation. This could be achieved by inserting:

“1a. ‘repair’ means repair as defined in article 2 point (20) of Regulation [on the Ecodesign for Sustainable Products];”

We are flexible in terms of the definition of independent repairer.

PT

Given the scope of the proposal and the obligations currently foreseen, PT does not identify the need to introduce a definition for “repair” nor for “independent repairer”.

Nevertheless, PT could agree with the introduction of such definitions, since they can be beneficial to ensure legal certainty.

In what regards the definition of “repair”, the Ecodesign definition may be used as a basis for work, as proposed by some delegations at the last meeting of the WP.

IE

Yes, in order to provide statutory clarity and certainty; to encourage and promote a market for independent repairers; provides a statutory basis to develop standards and rights for an independent

	<p>repairer including rights of access to spare parts from producers, codes and /or trade manuals, training and safety programmes for reparation of complex goods.</p> <p>In terms of definition- an independent repairer is not the following: retailer; distributor; wholesaler; or producer/manufacturer and has not entered into any exclusive, selective or restrictive agreements with any of them that may cause prejudice against the interests of the consumer or the smooth functioning of the market for independent repair service providers.</p> <p>MT Indeed, Malta agrees with the inclusion of definitions for both 'repair' and 'independent repairer'. It is especially important to include a definition of repair to distinguish it from the refurbishment of products. Whilst any definition should clearly state that 'repair' should restore the full functionalities of the product and its physical integrity, Malta would be keen to see the Council Legal Service's opinion on the ideal definitions.</p>
<p>Question 2: Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?</p>	<p>EL In our point of view the scope of the proposal does not need modification.</p> <p>HR HR could support the modification of the scope of the Proposal in the sense that text of the Article 1 should clarify the applicability of the Directive on the goods listed in the Annex II. Regarding Annex II we have no proposals to broaden or narrow the list at this point in time.</p> <p>IT Yes, we would be in favour of modifying it. As the concept of "refurbished good" is different from the one of "repaired good", we suggest to expressly include the former in the scope of the directive, even changing the title of the proposal. Considering the scope of art. 7 of the current proposal, we would like to ask the Commission to clarify the relationship it's with art. 1 that seems to limit the scope of the Directive to the repair of goods outside the liability following Directive 2019/771 and wider availability of information regarding repair services.</p>

Furthermore, the Proposal makes no reference to the protection of sensitive information such as trade secrets or intellectual property (IP), which is crucial to safeguard and promote continued R&D by European companies.

Also, while the Proposal limits its scope to products purchased by consumers, Annex II refers to products which would typically be used in business activities, such as large capacity data storage and server products, industrial refrigeration appliances with a direct sales function and welding equipment. A clear distinction must be made between B2C and B2B relationships.

SI

Like already explained Slovenia has a statutory functioning system of providing after-sales services, including repair for certain types of goods. For these types of goods producer or undertakings responsible for distribution or the sales of goods, have to provide authorized service providers - repairers, repair and maintenance of products, replacement parts and attachment devices for at least three years after the expiry of guarantee period (1 + 3 years).

To our understanding the proposed Directive and current Slovenian consumer legislation do not overlap and are in fact two parallel systems from which consumers can benefit mutually. However, if our understanding is not correct, we believe that the scope of the proposal and namely much more modest range of goods than in Slovenian legislation, will consequently reduce the level of rights of Slovenian consumers. In such a case the scope of the proposal needs to be adapted to fit only the goods listed in the proposal.

We believe that provisions of MS more favourable to consumers should be preserved.

FR

The French authorities would like the scope to be amended to clarify that the Directive includes both measures outside the scope of the legal guarantee of conformity and measures within the scope of the legal guarantee of conformity.

Indeed, as other delegations have pointed out in their written comments, the French authorities believe that, as currently drafted, the second paragraph of Article 1 limits the scope of the Directive to defects outside the scope of the legal guarantee of conformity, despite the fact that Article 12 relates to it.

DE

We are still in the process of forming an opinion on this question and the scope.

FI

For the moment, FI does not suggest modifying the scope of the proposal. However, it should be pointed out that the relation and scope of the obligations under the proposed new Directive and those of the SGD should be clearly defined and distinguished in the proposal.

CZ

- In our view, Article 1(2) is unnecessary as it might lead to misunderstanding that the scope is limited only to defects outside the seller's liability for conformity under SGD. However, looking at Recital 4 (*"promoting repair and reuse in the after-sales phase **both within and outside** the liability of the seller established by Directive (EU) 2019/771"*) and Article 12, the scope is broader.
- In addition, we are sceptical about the practical benefits of several provisions of the proposal. We would, therefore, propose to delete (at least) Articles 4, 7 and 12 (see our previous written contributions).

LV

We believe that the redundant requirements, which to a great extent duplicates the proposal for Eco Design regulation, should be excluded from the proposal. For example, in Article 21 of Eco Design regulation is stated that manufacturers ensure that consumers and other direct users are informed about the reparability of the product (in the instructions for use).

EE

To us, it is not clear which rules of this proposal apply to all products, and which rules apply only to products for which reparability requirements are laid down and are listed in Annex 2. We consider it important that the scope of the Directive and the Articles is clearly determined.

	<p>LU We believe that the scope should remain consistent with the Ecodesign sustainable product regulation (ESPR).</p> <p>DK We prefer clarifying the scope of the directive by inserting a definition of repair (see our response to question 1), but do not believe that it should be changed further at the moment.</p> <p>PT Yes, PT could support an amendment to the scope of the proposal. In fact, although PT supports the objectives of the COM proposal, i.e. strengthening the right to repair, namely by ensuring that consumers have more repair options outside the legal guarantee period, PT considers that the proposal could be more ambitious by establishing more safeguards for consumers regarding repair, starting with the amounts charged for repair services. In PT's view, it is essential to ensure that consumers have access to repair services at reasonable costs, so that they can choose to repair their products instead of investing in buying new ones. Only in a reality where repair is affordable, can there be a real alternative to mere product replacement.</p> <p>IE We support the scope of the proposal as it is. We are wondering if it might be worth including "maintenance" with repair. Maintenance could help to prevent the need for repair or delay repair, giving longer life to a good and is within the spirit of the proposal. Also, it could encourage those involved in the trade, who provide maintenance services, to register on the platform, and contribute to sustainability in this way.</p> <p>MT The scope of the proposal may be retained as currently proposed.</p>
<p>Question 3: Regarding the European Repair Information Form, would you be in favour of adding any other</p>	<p>EL Regarding the European Repair Information Form, we do not have any suggestions for the inclusion of further conditions in Article 4 (4).</p>

<p>conditions in article 4, paragraph 4? If so, which?</p>	<p>HR</p> <p>HR considers important prescribing in which language conditions of repair in European Repair Information Form must be presented to the consumer, with regards to the Article 5 paragraph 2 of the Proposal.</p> <p>Therefore, HR suggest following amendment of the provision:</p> <p><i>"The European Repair Information Form shall specify the following conditions of repair in a clear and comprehensible manner in a language easily understood by consumers."</i></p> <p>In addition, we would like to propose adjustment in the wording of the condition set out in point b). It is necessary to clarify the condition regarding the provision of information on the possibilities of consumer communication with the repairer through other means of online communication. It is necessary to specify that other means of online communication should include only those means of communication that enable consumers to store the information in such manner that it is available for later use, including data on the date and time of communication, to avoid any changes of the content and the time when the communication took place.</p> <p>Therefore, we suggest wording in the point b) as it follows:</p> <p><i>b) the geographical address at which the repairer is established as well as the repairer's telephone number and email address and, if available, other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means, and which enable the consumer to contact, and communicate with the repairer quickly and efficiently;</i></p> <p>SK</p> <p>We do not support the introduction of a European Information Form. The provision of a form imposes an unnecessary burden on repairers and an increase in repair costs for consumers. At the same time, following Article 5 of the CRD, the consumer will have to bear the costs of providing the repair information that he should have received as part of the pre-contractual information under Article 5 of</p>
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the CRD. The directive thus introduces an additional financial burden on consumers in relation to the repair of a product compared to the current situation, which we consider undesirable.

In this respect, we do not support the extension of Article 4 to include additional conditions, nor do we support the proposals in questions 4 and 5.

IT

Regarding the European Repair Information Form, we would be in favor of adding other conditions in article 4.

In particular, we express concerns regarding the functionalities, the responsible parties for its completion, the technical specifications, the content (as mentioned below).

Regarding the contents of the form, we consider there may be some additional elements to consider, depending on the specific needs or regulatory requirements of the Member States (and/or the Authorities) that will enforce the provisions relating to the form.

Here are some possible elements to be added:

- **Warranty Terms and Conditions:** It could be useful to include information about the warranty offered for the repair service. This may encompass the duration of the warranty, any applicable limitations or exceptions, and the procedures for requesting assistance within the warranty period.
- **Return and Refund Policies:** If the repair service involves upfront costs or a deposit, it would be important to provide consumers with clear information regarding the return and refund policy, in case they decide to cancel the repair or request a refund.
- **Limitations or Restrictions:** In cases where there are specific limitations or restrictions for the repair service, such as exclusions for certain types of defects or instances where repairs may not be feasible, it is important to provide this information clearly and transparently.
- **Complaint Procedures:** Including information on complaint procedures would be beneficial to address situations where consumers are dissatisfied with the repair service or wish to file a complaint. This should encompass details on how to contact the repairer, expected timelines for response and relevant authorities to approach for dispute resolution.
- **Liability for damages or losses:** Transparency regarding any limitations of liability for potential damages or losses that may occur during the repair process is essential. This information should be clearly stated to ensure consumer awareness.

- Data protection/Privacy: If the repairer collects or processes personal information during the repair process, it is necessary to provide a privacy statement (according to Article 5 of Regulation (EU) 2016/679) explaining how the information will be used, protected and shared;
- Authorization or Certification Information: If the repairer has obtained specific authorizations or certifications to perform the repair service, it could be useful to provide such information. By including details about relevant authorizations or certifications, consumer confidence in the service offered can be enhanced. Where applicable, the European Repair Information Form should contain information about technical qualification of the repairer. Indeed, some product groups require authorized repairers as well as testing after a repair is performed (e.g., electrical, and electronic products that fall under the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU). Therefore, it should be recognised that not all repairs can be carried out successfully by providers of repair service, especially independent non-professional repairers.

SI

We have concerns about the reasonableness of the Form, as it may represent an administrative burden that does not establish the obligation between consumer and repairer to enter into a repair contract. Moreover, EU consumer legislation already now contains comprehensive information obligations, which are also applicable to repair services. If there is sufficient competition on the market having a form to make comparisons between the offers is reasonable. However, in the market of providing repairs there is not a lot of providers, many times when you have nothing to compare, such a form seems a deterrent for consumers and providers repair and rather choose replacement or buying a new product.

FR

The list of information that must be provided with the quotation is sufficiently detailed and does not call for any particular comment on the part of the French authorities.

However, the French authorities would like to ensure that **once the consumer has accepted a paid quotation** - and thus agreed to pay for it - the professional, in turn, should be obliged to provide the required service. It would not be acceptable for a professional to charge the consumer for the cost of issuing the form and then refuse to carry out the repair. As an illustration, under French law, once a quotation has been proposed by the professional and accepted by the customer, it has contractual value.

The French authorities would like to confirm with the European Commission that this logic - any quotation signed is equivalent to a contract - exists at European level. If not, they suggest amending recital 8 (in red):

*“(8) The consumer’s free choice to decide by whom to have its goods repaired should be facilitated by requesting the European Repair Information Form not only from the producer, but also from the seller of the goods concerned or from independent repairers, where applicable. Repairers should provide the European Repair Information Form only where the consumer requests that form and the repairer intends **commits** to provide the repair service or it is obliged to repair.”*

In addition, the French authorities consider that Article 4 should be amended to strengthen consumer information regarding the existence of the form since its paragraph 1 establishes the principle that it is provided “upon request”. In fact, they consider that stating that the consumer will be provided with the European form estimate only " upon request " will only be applicable in rare cases, as pointed out by other delegations in their written comments. Consumers are unlikely to be fully aware of their rights.

To increase the use of this form, this provision should therefore be accompanied by an obligation on the repairer to provide information on the existence of the quotation. The French authorities are proposing an amendment to Article 4(2), which could be modified as follows (in red):

*“2. **Before the consumer is bound by a contract, Repairers whom are willing to repair without being obliged to -when the request isn’t under the article 5, shall inform him on the existence of** other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service.”*

Recital 8 should also be amended, to be worded as follows (in red):

*“(8) (...) A consumer may also choose not to request the European Repair Information Form and to conclude a contract for the provision of repair services with a repairer pursuant to pre-contractual information provided by other means in accordance with Directive 2011/83/EU of the European Parliament and the Council. **In any case, the repairer shall have informed the consumer in advance, before the contract is bound, of the existence of this Form and of his right to request/use it or not.**”*

DE

We are still in the process of forming an opinion on this question and Article 4 as a whole.

FI

FI remains hesitant to introduce an obligation for the mandatory provision of the form. Even though providing the European Information Form could make it easier for the consumer to compare the services available, it could, in some cases, impose an unreasonable administrative burden on traders, as the obligation to supply the form applies to all repair services of goods, regardless of the goods concerned or the type of repair. The solution could be linking the obligation to submit the form to, for example, repair services that exceed a certain price.

CZ

- We cannot support any provision that would oblige consumers to pay for information that the trader should (except the A4/4/d) provide under Article 5 or Article 6 of CRD for free.
- The repairer is usually charged a fee for defect identification. The defect identification/diagnostics may be very costly. We doubt that this would incentivise consumers to repair and that they would be willing to pay for more than one form with the risk that the repairer would decide not to repair the product. Czech consumer associations are also uncertain about the benefits of the form as a whole. According to their opinion, under current legislation, the trader has an extensive information obligation before concluding a contract with the consumer. In their view, this arrangement is a sufficient safeguard for consumers, therefore there is no need for further measures. Shall the European Repair Information Form be retained in the proposal, the consumer associations do not recommend adding any other conditions in Article 4(4).
- We prefer deletion of Article 4. However, as a compromise we suggest to introduce a European Repair Information Form set out in Annex I as a voluntary instrument in a similar way as it is in case of Model Instructions on withdrawal set out in Annex I of CRD. We are not in favour of adding any other information requirements in Article 4(4).

LV

In our opinion, this form is inherently useless, and its mandatory nature cannot be considered proportionate in relation to repairers - it will create an administrative burden for business, and we do not really see its added value for the consumer. Latvia is concerned whether a consumer with a damaged refrigerator will really visit several repairers to fulfill this idea. In addition, existing consumer regulations already states that, when providing a service, the consumer must have the opportunity to get acquainted with the price list before receiving the service, which should also contain information on how the price of the service is being formed. We believe that, if this form will be kept in the proposal, adding additional information to it is not a solution to improve informing consumers about the product's repairability - too much information will only confuse consumers and it will also be difficult to control its correctness. We can support the retention of this form in the proposal only if the preparation and issuance of this form is voluntary.

EE

We overall wonder whether there is a sufficient added value for the consumer to justify imposing an obligation to repairers to provide the European Repair Information Form. We already have clear pre-contractual information requirements stipulated, for example, in the Consumer Rights Directive. For us, that is sufficient enough. We question whether it is necessary to foresee different information requirements from the Consumer Rights Directive.

LU

Yes, we think that it would be useful to add the period of validity of the European Repair Information Form referred to in Article 4, paragraph (5) as this information is essential for the consumer.

It could be written as followed: "(j) the period of time during which the repairer shall not alter the conditions of repair specified in the European Repair Information Form."

On the principle of the form, Luxembourg considers that the wording could be clarified as to whether paragraph 2 constitutes an obligation for all repairers, including those who are not producers of goods covered by the Annex II. If so, LU wonders whether a lighter version of the form or even no form at all for "small" repairs or "standard" repairs needs to be considered in order to avoid a burdensome administrative charge.

	<p>DK We are flexible, but consider that further conditions should only be included in case that they have value for the consumer. Furthermore, we find it important that the consumer is not overloaded with information.</p> <p>PT Yes, PT could support an amendment to Article 4(4) to increase the information requirements to be included in the Form, namely:</p> <ul style="list-style-type: none"> a) Information regarding the validity of the quotation/repair conditions established in the Form; b) On top of the repairer identity, details on its technical qualification and related insurance (e.g., a registration number or a <i>weblink</i> to a national profession registry where the repairer would be registered, proving its qualifications to be a repairer). <p>IE At Article 4 paragraph 4 [to include] ...</p> <ul style="list-style-type: none"> c)... spare part(s) to be required d) The necessity or otherwise for the repairer to obtain spare parts. An option to be provided to the consumer to obtain and supply the repairer with any spare parts. <p>MT Malta's priority remains to avoid burdening both consumers and repairers with excessive information requirements. The repairer is already required to provide most of the information listed in Article 4(4) with the pre-contractual requirements under the CRD. In this regard, it is important that the text is streamlined with the CRD not to create unnecessary administrative burdens and information overloads.</p>
<p>Question 4: Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the</p>	<p>EL We think that an obligation to pay may be raised by the repairer only in connection with an actual inspection of goods. Our position is that we accept that a repairer may need to inspect the goods in order to be able to determine the defect or type of repair that is necessary, including the need for spare parts, and to estimate the repair price. In such case, the repairer may incur costs for inspecting the goods and providing the information on repair, and consequently the repairer may</p>

<p>consumer chooses to have the product repaired?</p>	<p>request a consumer to pay the costs that are necessary for inspecting such goods. Recital 9 implies that apart from inspection there might be other situations in which a repairer incurs costs for providing the information. However, we cannot foresee any other situations. In any way, we agree that the price charged to consumer should be deducted in case consumer assigns the repair of the good to the repairer.</p> <p>HR HR could support the proposal of including the costs for providing European Repair Information Form into the costs of the repair but would suggest to first clarify provision (Article 4 Paragraph 3) since it is not clear what term necessary cost covers. Does this cost refer to the cost regarding the diagnostic procedure?</p> <p>Also, who will monitor whether costs determined in each specific case are within limits of necessary costs as prescribed by the Proposal. We would like an explanation how those costs can even be questioned? HR recommends and would propose clarifying the provision in the accompanying recital 9.</p> <p>IT No, because we propose to delete art. 4(3). Charging a fee to provide the information included in the European Repair Information Form can discourage consumers from seeking multiple repair options and comparing costs, which hampers competition and limits consumer freedom of choice. For these reasons, the provision of the form should be free of charge. However, in cases where a significant assessment of the product is necessary, the professional may inform the consumer that there will be a cost for the evaluation and provide a clear quantification, explicitly reporting the hourly rate. Alternatively, considering the implementation of a maximum allowable cost for the evaluation service could also be explored.</p> <p>SI Yes, we support this idea if the filling in of the form has a price. However, we believe that the provision of the form should be free of charge to encourage consumers to seek multiple repair options and compare them. The form is in the end a detailed offer to execute a repair and offers usually are not. Nobody will charge a consumer for an offer to buy/sell a new product instead of repairing the old one.</p>
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In our opinion, the repairer could only charge for the actual costs where a significant assessment of the defect is necessary. The distinction between administrative costs of the preparation of the form and the costs of the diagnostics of the defect has to be very clearly presented. The distinction between administrative costs of the preparation of the form and the costs of the diagnostics of the defect has to be very clearly presented.

FR

The benefits for consumers of such a deduction remain to be demonstrated. Such a proposal could lead to an artificial increase in costs that would be passed on by professionals to the overall cost of the repair.

The French authorities therefore have reservations about the proposal to deduct the cost of the quotation from the total cost of the service.

DE

We are still in the process of forming an opinion on this question and Article 4 as a whole.

FI

Regarding the costs of the form, FI does not find it appropriate that the repairer would be entitled to request the consumer to pay the costs for the form as the form contains also information that the service provider is already, under the current legal regime, obliged to provide without any costs to the consumer before entering the contract. FI is of the opinion that the form should be provided free of charge to the consumer. However, FI does deem it appropriate that the service provider could be entitled to request the costs incurred for examining the defect in the good in case the service provider has informed the consumer of them in advance.

CZ

Shall the Form be retained in the proposal, we could agree with deducting such price from the price charged for the repair. Nevertheless, we would still prefer the deletion of Article 4.

LV

We do not see the added value of introducing such separate fee, because there should already be a price list for the services provided. In addition, it should be noted that there is already a regulation in the consumer law regarding the charges related to goods and services for consumers.

EE

We still have doubts about the added value of the Form. However, to answer the question, at first glance it seems to us that it should be up to the repairer to decide whether he/she will deduct the price charged to the consumer for provision of the Form. Thus, this Directive should not restrict the repairer from making such a decision himself/herself.

Instead we should ensure that if a consumer pays the repairer for providing the Form, the repairer should not be able to refuse to provide the repair service. We understand that when determining the defect of the product, it cannot be promised that the product is definitely repairable. But perhaps the determination of the defect and the provision of the Form should be separated. For example, it could be specified that the Form could only be provided if the product is repairable. This would mean that the consumer would be able to ask for the Form once the defect has been determined by the repairer. In such case, the consumer would have paid to have the defect in the product determined before asking for the Form. Only then should the repairer provide the Form. Even then, if the repairer were able to charge a fee to the consumer, it should be clearly defined for what this fee can be charged of.

LU

We are not opposed to the idea but we think it should remain a commercial argument that repairers could use as a competitive advantage.

Instead, in order to mitigate the deterrent effect of a paid form, we suggest that the principle of free or limited-cost forms should be included. This means that it is only by exception that the repairer could charge the consumer for the actual costs involved in assessing the repair of the good.

We would suggest inserting in paragraph 3 of Article 4 a first subparagraph worded as follows: "The European Repair Information Form is provided by the repairer free of charge or with limited costs for the consumer."

DK

Our main priority is to clarify the Commission's intention by clearly stating that the repair form should be free of charge as a starting point. By not including such wording, there is a risk that it would become another venue for making profit, which may hamper the effectiveness and efficiency of the initiative. Hence, there is a need to clearly state that the repair form should be free of charge and that any costs related to the examination can be covered.

We would need to examine further whether these costs should be deducted.

PT

Yes, PT would support the provision of deducting the price paid for the provision of the Form from the price of the repair service when it is provided.

IE

No, this not in the interests of the consumer, and it should be standard business practice of the repairer to generate this business document as it is with the production of invoices/receipts. Otherwise, it may act as an economic disincentive. Consumers should not be specifically subjected to costs for business forms by traders.

The "necessary costs" to be charged in relation to the form need to be made very clear and need to be specified - do they relate to the administrative cost of supplying the form, do they include the call out charge and the actual repair costs.

MT

In principle, Malta maintains a view in favour of measures that promote product repair and incentivise consumers towards electing that option. In this context, Malta observes that the cost to get a quotation for the repair of a product, is likely to constitute a significant deterrent to repair. Often and for most of the goods listed in the proposal's annex, an inspection would be necessary for the provision of an accurate quotation (with the exception of external and easily visible damage e.g., broken screen or appliance door). In the case of a malfunction, the product must be inspected. Without the inspection, there is a real risk that consumers would be provided with a worse-case-

	<p>scenario product diagnosis/evaluation, which would ultimately be likelier to dissuade the consumer from repair.</p> <p>Malta is not entirely confident that this issue can be fully addressed through the form. One may consider requiring more detailed pricing information on the platform.</p>
<p>Question 5: Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?</p>	<p>EL We agree with the current wording of the proposal: <i>“Without prejudice to Directive 2011/83/EU, the repairer shall inform the consumer about the costs referred to in the first subparagraph before the consumer requests the provision of the European Repair Information Form”</i>. As for the rest of the information, we don’t think that it is easy to estimate the time required by repairers to provide the completed Form with either the repair service or the assessment of the defect, as this may depend on a whole load of factors which cannot always be predicted beforehand (e.g. prior workload).</p> <p>HR HR considers that the provision about European Repair Information Form should be specified more precisely. Therefore, HR suggests considering prescribing the time limit in which the repairer is obliged to provide such Information Form in Article 4, Paragraph 1 of the Proposal. In this regard, HR is also of the opinion that it would be necessary to determine the form of the consumer's request and would suggest prescribing written form. Having consumer’s request in written form would help determine the moment from which repairer’s obligation to provide European Repair Information Form could start. Regarding the condition, set out in the Article 4, point f), that prescribes the obligation for the trader to inform consumer about the estimated time needed to complete the repair, HR would suggest deleting this provision.</p> <p>Providing with information on average time to complete the repair wouldn’t be possible for all types of repairs needed what makes this obligation too burdensome for the traders. Moreover, there will be reasonable cases when it’ll take much more time than estimated to repair goods (e.g., supply chain of spare parts disruption). Taking into consideration consumers expectations and high requirements of professional diligence for the traders, traders should anticipate such cases when giving</p>

information on average time. Consequently, providing with inaccurate information on the average time should be sanctioned by national law what makes this obligation excessive and disproportionate. Therefore, we propose to delete it.

IT

Yes, we would support introducing time limits.

We recommend establishing a specific timeframe for the right to repair to be exercised, starting from the date of purchase. This would prevent distributors from maintaining agreements with manufacturers for an unduly extended period. Furthermore, it is advisable to include time limits for reparability in all delegated acts to ensure clarity and certainty. Currently, certain delegated acts do not specify such time limits for reparability.

To ensure that the right to repair does not result in indirect harm to the consumer, we suggest that a maximum time limit be established for repairs, with corresponding compensation for each day of delay. This would involve setting standard maximum times for each product category (e.g., washing machines, dishwashers, cell phones, etc.).

SI

Yes, we support the idea of introducing time limits, but at the same time we believe that time limits without efficient enforcement, respectively with effective and enforceable sanctions are meaningless. Time limits need to be in place to achieve a fast repair or the consumer will choose another option.

FR

The French authorities believe that while, in principle, the parties should remain free to adjust the time required, in particular for the issue of a quotation, this may not be appropriate in cases where the defective product is covered by the repair obligation in Article 5.

In this case, the producer or his agent is under an effective obligation to repair, and this effectiveness should be achieved by carrying out the repair within a reasonable time.

The French authorities could support amendments aimed at defining the time limits within which the producer or its authorised repairer should be obliged to provide both the quotation and the repair service.

If deadlines cannot be set in the text of the directive, the French authorities support a drafting amendment that could be as follows (in red):

*“1. Member States shall ensure that upon the consumer’s request, the producer shall repair, for free or against a price or another kind of consideration, **within a reasonable time**, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II”.*

The concept of “reasonable time” proposed to be introduced should be understood as set out in recital 55 of Directive (EU) 2019/771 on the sale of goods, i.e. that reasonable time corresponds to “the shortest possible time necessary for completing the repair”.

DE

We are still in the process of forming an opinion on this question and Article 4 as a whole.

FI

FI does not support introducing specific time limits regarding the provision of the form, the repair service or the assessment of the defect. Introducing one specific time limit suitable for all repair services would be difficult as repair services and the amount of time required vary depending on e.g. the nature of the goods that are being repaired. Also, introducing specific time limits could potentially favour larger service providers to the detriment of smaller ones. In case time limits are to be introduced, any specific expressions (e.g. stating the exact amount of days) should be avoided and instead flexible expressions, such as “within reasonable time”, be used.

CZ

Each repair responds to different situations and defects. No one-size-fits-all approach can thus apply. We believe that consumers would welcome the repair within the shortest possible time frame, while businesses would demand more flexibility. Therefore, it would be difficult to strike a balance between the interests of consumers and businesses. It should be noted that we are targeting defects that are outside the seller’s liability. It means that there is no breach of the contract/law. We believe that the goal of this proposal is to promote the repair of the goods and not to discourage repairers from providing their services.

LV

We do not agree that any time limits should be set out. Issuing the form itself already creates an administrative burden and imposing additional deadlines once again will create an additional burden. Besides now, at least regarding the prevention of non-compliance, it is stipulated within the framework of the legal guarantee that the non-compliance of a product should be prevented within a reasonable period of time. Setting new deadlines means that someone must monitor compliance with these deadlines and handle complaints, which is a burden for supervisory authorities. We draw your attention to the fact that the mentioned terms will differ for different goods, and it is impossible to predict them correctly - they have to be evaluated individually, so we want to keep the condition of a reasonable time in this matter as well.

EE

Provision of the Form

When introducing time limits, it is important that these rules strike a balance between the interests of consumers and those of repairers. Firstly, rather than determining a specific number of days to provide the Form, the term “reasonable time” could be used. Secondly, if we set a time limit for submitting the Form, at what moment would the time start running? From the moment the Form is requested by the consumer or from the moment the defectiveness of the product is determined? Every repair situation is different. Therefore, it is very important to define from which point in time the deadline should start to run.

For example, in order to provide the Form, the repairer must make clear what the defect of the product is. To do this, the repairer may have to go to the consumers home to look at the product. Thus, if the time limit were to start running from the moment the consumer asks for the Form, this would essentially mean that within the same time limit, the repairer would also have to determine the defect in the product. Perhaps that would be too restrictive. Maybe the repairer and the consumer cannot find a suitable moment for both of them within this time limit for the repairer to come and inspect the product. So, if some kind of a time limit were to be created, perhaps it should start running from the moment the repairer has determined the defect. This would not be a problem if the provision of the Form and the determination of the defect are kept separate, as we have described in the answer to question 4.

Repair service and assessment of the defect

To us it does not seem reasonable to set time limits for offering the repair service. The length of the repair service also depends, for example, on delivery times of spare parts. The repairer might not have any control over this.

Same goes for the assessment of the defect. Some repairers and some consumers are so busy that it may not be easy to find the right time that is suitable for both. We should not interfere that much such matters.

LU

We are open to discussion but we are not particularly in favour of adding time limits for the various situations covered. We do not see any real added value insofar as non-compliance with these deadlines could not result in a sanction for the professional, as it would not in itself constitute a sufficient failure in the situations in question to generate a penalty.

DK

We are cautious regarding setting standardized time limits in this directive given that the directive in principle covers all consumer products and many different types of defects. However, the period in which the consumer is waiting should always be kept at a minimum in order to promote repair as an attractive remedy.

PT

Yes, PT considers it important to set time limits both for the provision/preparation of the form, which could be set "*within a reasonable period*" to the consumer, and for the provision of the repair service, which, unless there are good/understandable reasons, should not exceed 30 days.

IE

Time frames could be useful particularly for certain goods such as communications devices. A time limit could be set for the repair service. On the expiration of a reasonable time frame, the consumer could be afforded the right to have the unrepaired good returned with no cost incurred. The consumer at his option could waive their right to have the repair subject to a time limit on the basis of the complexity and spare parts and/or craftsmanship required for the repair of the good. There is a need to be mindful too that 'rushed repairs' can do more harm than good.

	<p>Temporary replacement of the good by the seller reduces consumer inconvenience and should entitle a longer time limit and may incentivise stocking of temporary replacement goods for this purpose.</p> <p>Time limits may put too much pressure on certain businesses to hold high inventory levels of spare part; so caveats and flexibilities may be required around the proposal for time limits; at this preliminary stage, an open minded position on time limits is being held.</p> <p>MT Malta understands that prescriptive timelines, particularly for the assessment of the defect and to provide the repair service, can be overly burdensome, most notably for repairers but in some ways, also to consumers. A time limit within which to provide the Form could be given consideration.</p> <p>Digital tools can be tapped into so as to have forms generated online, for instance by making them available to repairers through an EU platform.</p>
<p>Question 6: Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?</p>	<p>EL We think that the liability as established in Directive (EU) 2019/771 is quite effective.</p> <p>HR HR is of the opinion that relation between producer and subcontractor is subject of the contractual law and that their relation and mutual obligations are not in consumer's primary interest.</p> <p>SK There is no need for a change in the legislative text, provided there is a clear definition in the recital.</p> <p>IT Yes, a clarification regarding the relationship between producer and subcontractor in terms of liability (e.g. joint and several liability with the subcontractor) would be appropriate. The proposal, when the producer collaborates with a subcontractor for the repair, should include in the European Repair Information Form a requirement for informing consumers about subcontractor involvement in repairs. This requirement should apply to both producers and independent professional repairers who may collaborate with subcontractors.</p>

SI

We believe that from the consumer's point of view it is not essential who bears the liability, but in our opinion the producer should have the obligation to bear the liability. However, the division of liability and the redress options of traders in the supply chain was introduced for non - conformity of goods, digital services, and digital content, which mutatis mutandis should be applicable also in the case of the proposal.

FR

The French authorities consider that the cascading of liability is set out clearly enough in Article 5.

However, the obligation to provide repair under Article 5 cannot be satisfied solely by the presence of a producer or one of its subcontractors within the EU.

Yet neither Article 5 nor its corresponding recitals stipulate how consumers should exercise their right to repair (contact details of the professional, geographical proximity, etc.).

The French authorities therefore propose adding to recital 15 that the producer cannot fulfil his obligation to repair by simply designating an operator in the EU and that it is up to him to ensure that the person responsible is known by the consumer and accessible. They consider that it is up to producers to implement their repair obligation in such a way that consumers can benefit from it without major inconvenience (costs too high, time too long, geographical distance).

Recital 15 could therefore be amended (in red):

*(15) "The obligation to repair should also be effective in cases where the producer is established outside the Union. In order to enable consumers to turn to an economic operator established within the Union to perform this obligation, this Directive foresees a sequence of alternative economic operators required to perform the obligation to repair of the producer in such cases. This should enable producers located outside the Union to organise and perform their obligation to repair within the Union. **Their obligation to repair cannot be fulfilled by the mere presence of a designated economic operator established within the Union.**"*

The producer shall ensure that the consumer benefits from effective repair without undue constraints, particularly in terms of time, costs or place.”

DE

We are not quite sure, if we understand the question correctly. From our understanding, the producer (or the respective person according to Art. 5 para (2)) is always the contractual partner of the consumer. The division of liability between producer and subcontractor is subject to the contract between those and is not relevant for the consumer. Thus, we do not see what exactly should be clarified.

FI

FI is of the opinion that an addition to recitals on the division of liability between the producer and a possible subcontractor could be useful in order to clarify that the producer, although allowed to use a subcontractor, would ultimately be liable for the obligations under Article 5. The addition to the recitals could state, for instance, that regardless of whether the producer uses a subcontractor for the fulfilment of its obligation under Article 5, the producer is the one liable for the obligation vis-à-vis the consumer. However, the liability for damages and the possible division thereof should be left to be provided for on a national level.

CZ

We would rather support inclusion of provisions clarifying division of liability similarly to Articles 18 of SGD and Article 20 of DCD. On the other hand, it should always be clear who is liable for the repair and thus this provision should remain as simple as possible, so the consumers are easily able to identify the liable party. According to our consumer association, for the sake of certainty, the subject liable should always be the subject who enters into the contract with the consumer. A repair carried out by an independent repairer arranged without the involvement of the producer is of course the liability of the independent repairer.

LV

The manufacturer and all its subcontractors who carry out conformity testing and repair of the product should already have concluded mutual agreements. The consumer has an interest in having his product repaired within the scope of the contract, and in this context, it doesn't matter who

performs the repair. In our opinion, the mutual relations on the business side doesn't need to be regulated in acts intended for consumers.

EE

Some clarity is needed on this issue, but at the moment we are still analysing it and cannot say what the right solution would be. For us, it is more important at this stage to find out what the obligations are for the subcontractor if the producer uses him to fulfil his obligation. For example, we said in our previous written comments that under Estonian law Article 5(1) would not imply an obligation for the subcontractor to enter into a contract with the consumer. The contract would still be between the consumer and the producer.

LU

Luxembourg is not in favour of the sentence "The producer may sub-contract repair in order to fulfil its obligation to repair." because we do not see an added value to this precision. The manufacturers are free to sub-contract their obligation to repair. The question of the subcontractor's liability should be governed by ordinary tort law. We believe that the consumer should have only one interlocutor, the manufacturer, who, if his/her liability were to be engaged in an unjustified manner, would be able to engage the liability of his/her subcontractor. In fact, this is how the Sales of Goods directive (SGD) addresses this issue in Article 18 on the right of redress.

PT

PT agrees that producers should be able to subcontract repair services, as foreseen in the proposal, in order to ensure better access to these services for consumers, namely because they are closer, which will contribute to reducing the carbon footprint of repair, promoting a more sustainable production and distribution pattern. Thus, PT is of the opinion that producers should be obliged to provide information on the identity of subcontracted services/professionals, where applicable.

However, for the time being, PT does not identify a specific need to clarify in this proposal the contractual relationship/division of liability between producers and the services subcontracted by them, since the relevant contractual relationship is that established between the consumer and the producer.

	<p>IE Yes, however it should not be the concern of, or have any onus put on the consumer in relation to ascertaining division of liability between these parties for the recovery of loss. The consumer should be entitled to recover in full any loss from one party and it is for that party to recover or obtain an indemnity against the other party.</p> <p>MT Whilst in general, greater clarity in the text is preferable, it should be noted that if the repairer is a subcontractor of the producer, division of liability is bilaterally defined and regulated through their contractual agreement/s. Nevertheless, Malta does not object to an open discussion on division of liability being included in the operative part of the proposal text.</p>
<p>Question 7: Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?</p>	<p>EL We think that the expression “another kind of consideration” could be kept in order to cover situations that a voucher is used in the context of the offering of repair services. However, it should be better explained in the respective recitals by providing concrete examples</p> <p>HR HR considers necessary to specify the provision in Article 5 paragraph 1, especially part of the provision that allows the producer to repair the product at the consumer's request in exchange for another kind of consideration. Wording “<i>another kind of consideration</i>” needs to be specified more clearly since it is not clear what is another type of compensation that the consumer would be required to pay to the producer when repairing goods. Therefore, HR recommends clarifying the provision in the accompanying recital 12 or alternatively, deleting the expression.</p> <p>SK If the phrase "or other kind of consideration" is retained in Article 5(1), there is a need for a consistent explanation in the recital of what the phrase represents.</p> <p>IT Yes, we believe it is useful and we would prefer to explain it in the recitals. Producers may indeed repair goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II for free or against a price or another kind of</p>

	<p>consideration, as long as it complies with EU and national laws. Regarding the possibility of repair against “another kind of consideration”, the producer may buy the defective goods for refurbishment and the consumer may receive a refurbished product similar to the original one without any monetary exchange. Alternatively, the producer may purchase the defective good for refurbishment and offer the consumer a voucher to purchase other products.</p> <p>In any case, since the meaning of “another kind of consideration” is not pointed out in the proposal, we would invite the Commission to provide further clarification, even only in the recitals.</p> <p>SI</p> <p>Considering that the Slovenian translation of this expression is a bit unusual and can therefore lead to different interpretations, we think it is better to explain it in the recitals.</p> <p>FR</p> <ul style="list-style-type: none"> • On the information obligation (Article 6) <p>The ambition of Article 5 (obligation to repair) should be developed by clarifying Article 6 (information on obligation to repair) to ensure that the information required from the producer is more numerous and clearer, cf. question 9.</p> <ul style="list-style-type: none"> • On the inclusion in the text of contracts concluded not in return for payment of a price but for “another kind of consideration” <p>The French authorities have reservations about maintaining “another type of consideration” in Article 5(1) and, in any case, would like to ask the Commission about specific cases where goods would be repaired in return for the provision of personal data.</p> <p>In addition, they propose that, as in French law, the terms “price” and “consideration” should be combined under a single term “for valuable consideration”, corresponding to the following drafting change (in red):</p> <p><i>“1. Member States shall ensure that upon the consumer’s request, the producer shall repair, for free or for valuable consideration against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts</i></p>
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as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair.”

DE

We do not see a reasonable scope of application for a non-monetary consideration, but the expression can as well be maintained. We would welcome an explanation of the expression in the recitals.

FI

FI does not necessarily find it problematic to include the expression “or another kind of consideration” in Article 5. However, it could be clarified in the recitals what is exactly meant with the expression (e.g. data).

CZ

We agree that there are difficulties in understanding the content of the current wording, and therefore we would prefer to modify the text in line with Article 3(1) of DCD and the used wording “provision of personal data”, unless there is another form of consideration.

LV

Latvia doesn't support the wording of the article - it is very vague and easily misunderstood. In the context of other regulations, this wording means that a service is provided and received in exchange for personal data, but we do not consider that the payment for the repair service should be linked to personal data as it is in other cases.

EE

Estonia is still analysing this question.

LU

Luxembourg does not support the expression “or another kind of consideration”. We consider it to be neither clear neither appropriate in the event that it includes personal data. Although we are very receptive to the issue of having a future-proof text, the provision of personal data in exchange for a service should be limited to situations where the personal data and the service provided are linked

	<p>as in the case of the supply of digital content or digital services in the meaning of the Digital Content Directive 2019/770 (DCD). The aim of including this reference in the DCD was to allow consumers to benefit from legal protection in seemingly “free” contracts (these kind of “free” services are generally based on an economic model where personal data are collected by the providers in order to create value from the data processed).</p> <p>However, in the case of the R2R Directive, the situation is different because it will be a question of repairing goods that fall within the scope of the SGD, i.e. tangible movable goods and not digital content or digital services (except for water, gas and electricity). Since consideration in the form of the supply of personal data has not been included in the SGD, we do not understand why this consideration should be included in this Directive. Moreover, this would broaden the concept of price, which could also have consequences for the rest of the contracts covered by consumer law.</p> <p>Finally, the European Data Protection Supervisor (EDPS), supported at national level by the Commission Nationale pour la Protection des Données (the National Commission for Data Protection in Luxembourg), had already warned the legislator in its opinion 4/2017, stating that “personal data cannot be compared to a price, or money. Personal information is related to a fundamental right and cannot be considered as a commodity.”</p> <p>DK</p> <p>It should be noted that the Danish version of the proposal does not contain a similar wording to “or another kind of consideration” in the article.</p> <p>We find that it is important to clarify the meaning of the wording “or another kind of consideration” if the producer should be able to require so. This could be done in the recital while the expression is kept in the article.</p> <p>PT</p> <p>As mentioned before, PT questions what should be understood by “<i>or another kind of consideration</i>”. Since the recitals do not contain any examples of other consideration, it seems unclear what is meant by this expression. In this context, PT has difficulty in assessing the usefulness/pertinence of the reference in question. Without prejudice, and as a preliminary point, PT could support a reference and explanation in the recitals rather than its inclusion in the article.</p>
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	<p>IE Yes, this element should be retained in the Article. The recitals could explain the concept/doctrine of consideration and examples thereof. A good example is the consumer's consideration of 'forbearance to sue for damages and loss' in exchange for the acceptance of liability by the producer and his undertaking to repair of the good. In the subsequent event of a failure to repair or an unsatisfactory repair, the consumer can then sue for loss on foot of same without having to prove liability. The recitals should make clear that the consumers rights under Articles 13/14 of the SGD are consistent with and not adversely affected by Article 5.</p> <p>MT Whilst not being in outright objection to its inclusion, Malta would prefer to gain a better understanding of what the rationale for such text is – what are the expectations for its application?</p>
<p>Question 8: Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?</p>	<p>EL Yes, are rather in favour of including service providers as responsible for the repair, in order for consumers to be able to exercise their right more easily.</p> <p>Moreover, when it comes to Art. 5, we have the following remarks to make:</p> <p>Producer means a manufacturer as defined in Article 2, point 42 of the Ecodesign Regulation. The definition of 'manufacturer' therein includes <i>"any natural or legal person who manufactures a product or who has such a product designed or manufactured, and markets that product under its name or trademark or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product"</i>.</p> <p>Consequently, the definition of producer in this Art. 5 par.1 does not include the authorised representative of the producer as in Art.5 par.2. In our view, the obligation to repair should be extended to such a person also, in order for consumers to be able to exercise their rights effectively.</p> <p>We already face similar issues regarding the Pan-European commercial guarantee given by manufacturers based in other MS in case of (legal) parallel imports within the EU. Consumers that live in a country other than the MS of the person that manufactures the goods are denied the commercial guarantee by the authorised representative (who might be a subsidiary of the</p>

manufacturer) under the pretext that such representative is neither the manufacturer nor the importer of the good in that MS. Such practice is most probably contrary to competition law (e.g. Zanussi case), but we think that it is appropriate to include an equivalent provision regarding the obligation of authorised representatives to repair in this Article.

Our suggestion is the following drafting:

*“Member States shall ensure that upon the consumer’s request, the producer **and/or its authorised representative** shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer **and/or its authorised representative** shall not be obliged to repair such goods where repair is impossible. The producer **and/or its authorised representative** may subcontract repair in order to fulfil its obligation to repair”.*

HR

HR does not consider this necessary to be included in the Proposal, due to the fact that the current proposal offers adequate obligation to repair in all circumstances. However, we might be flexible if this proposal is explained in more comprehensive and adequate manner.

SK

We do not agree with the extension of the subjects under point 8. A potential extension should be preceded by a business impact analysis.

IT

It should be noted that the goods within the scope of the Directive are limited to those specified in the legal acts listed in Annex II, as well as the spare parts - and therefore the defects subject to the repair obligations -, and the requirements on the access to repair information. The legal acts in Annex II refer to the obligation of manufacturers, authorised representatives or importers in a cascade defined today in the framework Directive 2009/125/EC and tomorrow in the new ESPR Regulations. Therefore, the inclusion of the fulfillment service providers in the cascade of obligation to repair in Art. 5 could be done only if they perform the same functions as importers (see Recital 13 of Market Surveillance Regulation EU 2019/1020) and relevant for the repair of goods. These

	<p>functions should be described in the Directive and linked to the fulfillment service provider (whose definition would consequently have to be added too, as indicated in art. 2 of Market Surveillance Regulation EU 2019/1020) to legally justify the inclusion of these subjects and their obligations towards the repair of goods in Art. 5.</p> <hr/> <p>REF. Market Surveillance Regulation EU 2019/1020: Art.2(11) 'fulfilment service provider' means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding postal services as defined in point 1 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council, parcel delivery services as defined in point 2 of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council, and any other postal services or freight transport services; Recital (13): The challenges of the global market and increasingly complex supply chains, as well as the increase of products that are offered for sale online to end users within the Union, call for the strengthening of enforcement measures, to ensure the safety of consumers. Furthermore, practical experience of market surveillance has shown that such supply chains sometimes involve economic operators whose novel form means that they do not fit easily into the traditional supply chains according to the existing legal framework. Such is the case, in particular, <i>with fulfillment service providers, which perform many of the same functions as importers but which might not always correspond to the traditional definition of importer in Union law</i>. In order to ensure that market surveillance authorities can carry out their responsibilities effectively and to avoid a gap in the enforcement system, it is appropriate to include fulfillment service providers within the list of economic operators against whom it is possible for market surveillance authorities to take enforcement measures. By including fulfillment service providers within the scope of this Regulation, market surveillance authorities will be better able to deal with new forms of economic activity in order to ensure the safety of consumers and the smooth functioning of the internal market, including where the economic operator acts both as an importer as regards certain products and as a fulfillment service provider as regards other products.</p> <hr/> <p>SI Yes, we are in favour of the idea. It has to be ensured that a repair is as accessible to the consumer as a purchase of a good and that it can be done in an accessible, affordable and easy way for the consumer. However, fulfilment service provider can be responsible for the repair only under the condition when no other economic operator (manufacturer, importer, authorized representative) is established in the Union (as article 4, paragraph 2 (d) of Market Surveillance Regulation EU 2019/1020).</p>
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FR

Although it is always more profitable for the consumer to be able to rely on numerous categories of potential responsible parties within the Union, some of them may not be in a position to fulfil the obligation to provide redress under Article 5. This is the case for providers of order fulfilment services, which are mainly charged with logistics.

The French authorities consider that providers of order fulfilment services are not in the best position to fulfil an obligation to repair. Therefore, the choice to keep them excluded from the scope does not seem to jeopardise the objective pursued by the text.

On other points related to Article 5

The French authorities consider that spare parts should be accessible to all repairers, not just independent repairers, but also to consumers, to facilitate access to repairs, including by consumers themselves (development of repair cafés). They also believe that this access should be simple and that the producer should not impose any additional conditions to give access to spare parts.

Therefore, they propose the following amendment (in red):

*“3. Producers shall ensure that **independent** repairers **and consumers** have access, **without any additional condition**, to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II.”*

In addition, **the French authorities reiterate their proposal to add a new article to prohibit the practice of professionals seeking to restrict the distribution of their spare parts or even to prevent the repair of the goods they manufacture outside their authorised channels.** These practices go against the objective of Article 5 of the Directive, and are likely to lead to the premature end of life of goods.

This ban would complement the new practice 23i (in Annex I of Directive 2005/29) proposed in the proposal of Directive.

To this end, they suggest inserting an article between Articles 5 and 6 of the proposed Directive, worded as follows:

“Article 5 a.

Prohibition of the part pairing

1. Any technique by a producer or marketer which has the effect to prevent a repair, a refurbishment or limiting the restoration of goods outside its approved channels/circuits should be prohibited.

2. Any practice which has the effect to limit the access of a repairer to spare parts, to technical information, including software enabling the repair of products, should be prohibited.”

DE

We are still in the process of forming an opinion on this question and the scope.

FI

FI does not support including the fulfilment service providers in Article 5 as imposing an obligation to provide repair services on such operators would be unreasonable and unnecessarily burdensome on the operators.

CZ

We are rather sceptical about this solution. Recital 13 of the said Regulation clarifies that “*fulfilment service providers, which perform many of the same functions as importers but which **might not always correspond to the traditional definition of importer in Union law***”. The fulfilment service provider takes care of warehousing, packaging and dispatching of a product, but it is not its owner. We are not convinced that this provider should be obliged to repair the goods that they only packed and dispatched for other economic operators. We don’t consider the imposition of such obligation as proportional and justified.

LV

We do not see a possibility in which way this condition would be implemented, because information about these service providers will not be available to consumers, therefore there is no added value for including it. In addition, we point out that no adequate impact assessment has been carried out on this issue.

EE

Before we start adding anyone else as an obligated party to repair, it should be clearer who already is subject to the obligation to repair. Right now, it is difficult to assess which persons will be affected by Article 5 paragraph 2. The definitions of the persons mentioned derive from the Regulation on the Ecodesign for Sustainable Products. The procedure for that Regulation is still ongoing. Therefore, it would firstly be necessary to clarify who is affected by the cascade of obligation to repair. We would also like to note that the impact on fulfilment service providers has not been analysed, so the list of persons currently subject to the obligation to repair should not be extended.

LU

Regarding the liability of the fulfilment service providers, we have a negative scrutiny reservation. Luxembourg also considers that the reference to the notion of producer in this text may lead to confusion in the context of the Sales of Goods directive. The SGD and the national transposition pieces of legislation refer to a broader concept of producer as far as producer means “a manufacturer of goods, an importer of goods into the Union or any person purporting to be a producer by placing its name, trade mark or other distinctive sign on the goods” (article 2, point (4) SGD). However, this proposal refers not to the producer within the meaning of SGD but to the manufacturer within the meaning of ESPR. We therefore suggest that, in order not to cause confusion between the legislations, the text should directly refer to the manufacturer within the meaning of ESPR.

PT

For the time being, PT has a scrutiny reservation regarding this matter and is examining the appropriateness of including fulfilment service providers as professionals liable for the repair obligation under the same terms as for producers.

	<p>IE ‘Fulfilment service provider’ as defined in Article 3 of the said 2019 Regulation means a commercial service provider of at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, (it excludes postal services). Placing some statutory duty to repair on such ancillary service providers is too complicated and is not in the best interests of the consumer. It should be a matter for the producer/seller to indemnify themselves in relation to risks of transit; while accepting its liability to consumers to repair or replace damaged goods.</p> <p>MT It is critical to remain conscious of the challenges and substantial burdens that such an inclusion is likely to bring about on micro enterprises and SMEs, especially in smaller Member States such as Malta. Smaller Member States may be able to achieve a good degree of consumer protection as well as increased sustainability through wider take up of repair in other ways, such as by supporting and incentivising local repair infrastructure and through collaboration with already established economic operators.</p> <p>There should also be an obligation to have repairers in proximity of the consumer. Most of the goods listed in annex II may not be feasibly repaired at a distance. There should be an obligation on traders to ensure that there are repairers in proximity to where they are directing their sales. A trader should not be allowed to sell a product listed in annex II for which there is no repairer listed in the platform in proximity.</p>
<p>Question 9: Regarding article 6, would you further develop the information to be provided? What information would you include and why?</p>	<p>EL We think that article 6 does not need to be changed.</p> <p>HR At this point HR does not have any comments on this provision.</p> <p>SK We consider the information in Article 6 to be sufficient. We do not support their extension.</p>

IT

Yes. It would be beneficial for consumers to have a price list or reference tariff for repairs and spare parts. This would enable them to assess whether the repairer is overcharging or not. Additionally, we request that price information be included by default under the "repair conditions" category).

SI

We support the proposal of NL, LV and DK to include additional information on the manufacturer's repair obligation in the digital product passport based on the Ecodesign for Sustainable Products Regulation proposal.

FR

The French authorities would like to see the producer's information obligation under Article 6 strengthened in order to consolidate the effectiveness of the repair obligation under Article 5 (mentioned above).

Consumers should be able to identify the professional responsible for the repair and the terms and conditions under which they entrust their goods to that professional. To this end, the producer should be required to provide the consumer with the necessary information on a durable medium.

In particular, the French authorities believe it would be useful for consumers to know the repairer's contact details, the quality of the repairer, his relationship with the producer (subcontractor, importer, distributor, independent repairer who has signed an agreement with the producer, etc.) and the means of collecting the goods (whether the goods should be dropped off at the repair site or sent by post).

In addition to informing the consumer at the time of purchase, the producer should also be obliged to keep this information updated and make it available to the consumer, where appropriate, on its website.

Lastly, the French authorities do not consider it appropriate to refer to the platform provided for in Article 7 as a means for producers to inform consumers about the repair procedures for

each of their goods. This platform should in fact be reserved for repair services outside the scope of Article 5.

Thus, the French authorities are suggesting a rewording of Recital 20, as follows:

*“(20) In order to increase the consumer awareness on the availability of repair and thus its likelihood, producers should inform consumers of the existence of that obligation. The information should mention the relevant goods covered by that obligation, together with an explanation that and to what extent repair is provided for those goods, for instance through sub-contractors. That information should be easily accessible to the consumer and provided in a clear and comprehensible manner, without the need for the consumer to request it, and in line with the accessibility requirements of Directive 2019/882. ~~The producer is free to determine the means through which it informs the consumer.~~ **To this end, the producer shall inform the consumer, on a durable medium, at the latest at the time of the delivery of the goods, of the modalities for the consumer to obtain repair of the goods. In the same manner, the producer keeps this information updated and informs the consumer, without any due delay, of any change. The producer can upload this information on his website.**”*

Article 6 could also be amended as:

*“Member States shall ensure that producers inform, **on a durable medium**, consumers of their obligation to repair pursuant to Article 5. ~~and They provide~~ **detailed and updated** information on the repair services in an easily accessible, clear and comprehensible manner, for example through ~~their website or the online platform referred to in Article 7.~~”*

With these suggested amendments, the French authorities would like to ensure a greater effectivity of the provision.

DE

It would be useful to clarify in a recital that the information has to be provided to the consumer at the point of sale at the time of the purchase.

	<p>FI For the moment, FI does not deem it necessary to include any additional information requirements in Article 6 of the proposal.</p> <p>CZ No</p> <p>LV We believe that Article 6 should not be included in this Directive, because similar conditions will already be included in other legal acts, such as the Ecodesign regulation, which will determine the obligation to inform the consumer that the specific product can be repaired (see answer to question No.2). If this article is retained in this proposal, such information should be provided in a standardized way, for example with digital product passports. However, on the other hand, vulnerable consumers should also be considered, because not all consumers have access to the Internet or do not have sufficient knowledge to use it, so it is important for now that the information also remains in a tangible, paper format (such as user manual, etc.).</p> <p>EE We can overall welcome the flexibility left to producers on how to comply with the obligation to inform consumers. However, at the moment it is not entirely clear to us to what extent the producer must inform the consumer. It is important that the extent of this obligation is sufficiently clear to all market participants. Perhaps it should be specified in this Directive that the producer must inform the consumer, for example, which repairers repair the consumer's product. Also, for which defects the product can be repaired and for how long the consumer can request the repair. We also noted it in our previous written comments. There could also be details on where to buy spare parts as well as home repair instructions. All this information could be disclosed in a digital product passport. Given that the procedure for Regulation on the Ecodesign for Sustainable Products is still ongoing, it is not clear whether Article 6 will allow this information to be disclosed in the digital product passport or not. Clarity on this issue is certainly needed.</p>
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LU

No, Luxembourg thinks that the information foreseen in article 6 are sufficient.

As regard to the information to be provided, we also wonder whether information on the obligation to repair could be included in the Digital Product Passport (DPP). The DPP seems to be a communication medium which is easily accessible to the consumer and which would bring together the essential information that the consumer needs to know about the good.

DK

Information should be provided to the consumer in an easily accessible and understandable manner. Ideally, it would be standardized across Member States to ensure that consumers would be able to find the information across the EU.

One obvious way to make the information available could be the digital product passport from for example the Ecodesign Regulation for those product groups covered along with relevant information such as repairability. At the WP Meeting on 14 July, the Commission was positive towards the idea of using the digital product passport to provide the information but still needs to clarify whether it is a possibility, and we are looking forward to hearing what the Commission finds and which aspects are being clarified.

The provisions of the proposal regarding consumer information should in general be thought together with the information requirements in for example the new Digital Product Passport in the Ecodesign for Sustainable Products Regulation (ESPR).

PT

Given the importance of ensuring that consumers are aware of the existence of the new obligation established in the proposal, PT considers it essential to clarify the terms in which this information is made available. Therefore, in response to the question posed, PT considers that it is of the utmost importance to clarify in this provision the moment when producers should inform consumers of their obligation to repair.

	<p>On the other hand, and in line with the answer to question 6, PT considers that producers should be obliged to provide information on the identity of subcontracted services/professionals, whenever applicable.</p> <p>IE Information should include access to spare parts including trade manuals, codes, reference numbers for these parts; specialised and/or future- proofed information may be required for the repair of electronic goods/goods interconnected with digital content/services regarding installation/updates etc. Information on service and maintenance of the goods, including service intervals to ensure the longer durability of the goods would be useful and would complement the specific durability information recited in Recital 32 of the SGD. Recital reference could be made in regard to the accessibility, availability and storage (e.g. stored by way of a durable medium) of such information with a minimum time-frame stipulated as to these requirements around same.</p> <p>MT Malta believes that this provision should be kept in the broadest and most flexible drafting possible, leaving Member States free to act in whatever way is deemed best for their local scenario and specificities.</p>
<p>Question 10: In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?</p>	<p>EL In our point of view the online platform would be more effective established at national level with an access point on the EU portal, in a similar manner to how the platform for online dispute resolution also works.</p> <p>HR HR is of the opinion that setting up a national platform that will connect consumers with repairers, is useful tool which would help consumers to assess and compare the merits of different repair services. Although it could encourage consumers to choose repair instead of buying new goods, when products become defective, HR considers that formation of such platform would demand significant financial support. Therefore, in order to efficiently implement the platform in question, HR proposes setting up a platform on Union level or, as a second-best option would suggest that EC consider providing certain financial support to the member state if decided to establish platform on national level of each member state.</p>

SK

We support the establishment of a platform at EU level.

IT

(ii) EU level.

In order for consumers to enjoy more choices to have their products repaired, we believe that it would be important to establish a European-level platform, instead of many at national level. In this way, competition between repairers would be stimulated, with benefits for consumers in terms of prices and quality of service. Moreover, having an Eu level platform is more consistent with the maximum harmonization approach of the proposal and aligns better with the need for EU action from a subsidiarity perspective.

SI

In our view the most efficient way would be establishing an online platform on EU level with access point to the voluntary national portal (if this kind of portal already exists or will exist in the future). We believe this will ensure easier access on stop shop access to information, EU wide recognition by consumers and choice.

FR

The French authorities reiterate their preference for an online platform at national level for the following reasons:

- France already has satisfactory experience with several websites registering repairers, with free access for all consumers, making it possible to find a local repair professional and functioning fairly closely to the requirements currently set out in the proposal for a directive.
- The idea of a European platform would risk distancing the consumer from the repairer and undermining the objective of this initiative (more sustainable consumption and protection of the environment). In particular, the further the repairer is from the consumer, the more negative the environmental impact of repairs will be.

The French authorities consider that the solution of a national platform with an access point on the EU portal could also be envisaged.

DE

We are still in the process of forming an opinion on this question.

FI

FI remains hesitant about introducing an obligation for Member States to ensure that at least one online platform exists in their territory. Although an online platform can be considered useful in the sense that it can increase consumers' awareness of repair services and possibly bring together businesses offering repair services and consumers in need of repair services, FI still suggests that the proposal should be modified to only "encourage" Member States to promote the introduction of such online platforms instead of ultimately requiring Member States to establish one. With this excessive costs for Member States for the possible deployment of online platforms could be avoided.

CZ

There is no need to oblige Member States to establish such a platform. In our opinion, only encouragement to establish a platform in a recital would be sufficient. Even the Czech consumer associations are not convinced that such platform, (quotation) "*especially when established by the public authority is the efficient solution to help priorities repairs*". They would prefer the platform to be funded jointly by associations of producers, importers and distributors instead of the public funds. Back to the question at hand, from the options offered, we prefer option (ii) EU level. However, we agree with our consumer associations that this platform should enable consumers primarily to find repairers in their language, near their home as consumers rarely choose to repair the goods outside their domestic market (even region).

LV

LV is not in favor of the idea to impose on MS the obligation to create and maintain the online platforms. As many colleagues indicated during the meeting, these are considerable administrative burden and expenses for state budget, because the platform not only has to be created, but also maintained. Without an obligation to register, there is no guarantee these resources will be spend efficiently. In addition, since Article 7 foresees the opportunity for repairers to place information on or through the platform, Digital services Act will apply to this platform, which foresees quite extensive requirements, including ensuring points of contact, transparency reporting, notice and action mechanisms, internal complaint handling systems, out of court dispute settlement, rules for online

	<p>interface design, protection of minors, etc. Excluding repair service providers from the platform might not be as easy – since it will be a platform with content provided by third parties, Digital Service Act (DSA) will apply which enables repair service providers as recipients of the platform to launch a complaint regarding decisions to suspend or terminate their access to the service. In this case, there are no legal grounds, unless the repair service provider is posting illegal content on the platform, to limit access to the service.</p> <p>In addition, consumers might perceive service providers on this platform as being state “approved” or of certain quality and therefore more reliable, which will not be the case.</p> <p>We propose to make this requirement for ensuring an online platform voluntary, inviting member states to promote the creation of such platforms, but not obliging them to create and to maintain one. We should encourage repairers to offer their services to consumers in the best way possible, but it should be kept in mind that such platform will be a great financial and administrative burden for member states, especially small ones. We propose following text to replace current Article 7:</p> <p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;"><i>Online platforms for repair and goods subject to refurbishment</i></p> <p style="text-align: center;"><i>Member States shall promote existence of online platforms in their territory that allow consumers to find repairers, sellers of goods subject to refurbishment or purchasers of defective goods for refurbishment. The use of online platforms shall be free of charge for consumers.</i></p> <p>Latvia as a compromise could accept and support creation of EU wide platform managed and maintained by Commission. It should be considered that many repairs are actually not carried out in the specific country, so a common EU page would be a better solution. If someone in the given member state wants and takes the initiative, a national-level platform can also be created, because, as several DVs already mentioned in previous working group meetings, it will be difficult for small countries to create and maintain such a platform (large financial, administrative and manpower investment). Existing pages, if any, can continue to run alongside the EU page. We believe that it is necessary to find a technologically neutral solution that would ensure the circulation of information about repair services.</p>
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EE

It seems to us that it would be more efficient to create a platform at EU level.

Firstly, we note that the consumer has all the necessary information on the EU platform. While using the search function, the consumer could choose to look up those repairers that are located in the consumer's home Member State. If a consumer cannot find a repairer in their own Member State, it would be easy for them to search for repairers in a neighbouring Member State on the same online platform. In such a situation, it would be difficult and confusing for the consumer to have to look for another website with a different design etc. To make the EU-wide online platform easier to use, the search function could be designed in such a way that the consumer can search for a repairer in a particular Member State or in a specific city in a Member State.

Secondly, a single platform at the EU level is also useful in situations where consumers move from one Member State to another. In that case, the consumer would already know which platform to use and could easily find everything there. This is also important for improving the internal market.

We would also like to mention an observation made by one of the delegations in the previous Working Party. Creating an online platform at EU level is not far from the consumer. Every platform is easy to find and access online. In any case, in order for consumers to use any online platform, it is essential to raise their awareness.

For now, consumers can search for information on repairers using, for example, the Google search engine. For us, that is sufficient enough, but on the basis of the above, it may be useful for the consumers to create just one single EU-wide online platform.

LU

(i) or (iii)

The more efficient in our view would be an online platform on national level or on national level with an access point on the EU portal.

We believe that a national platform is closer to consumers and repairers and will make it easier to promote the repair sector. The European access point would have the advantage of centralising the various national platforms and encouraging cross-border repairs.

DK

We consider that a market driven approach would be the best way forward. However, we have a scrutiny reservation regarding the choice between the above-mentioned models.

	<p>PT</p> <p><u>PT supports the position of BE and SI regarding the creation of a single platform at EU level (instead of national platforms), as this would allow a wider range of choices for consumers, especially for consumers residing in MS where the repair market is quite small.</u></p> <p>As already identified by other MS, PT has some reservations regarding the obligation under Article 7, as it could create a considerable administrative and budgetary burden for MS, and therefore views positively the FI proposal to provide for the possibility of developing these platforms by MS, rather than obliging them to create them.</p> <p>IE</p> <p>The repair market should be accessible for a consumer at an EU market level. It would allow wider choice to consumers and more competition on prices and quality of service. Also, there would be more consistency/harmonisation of approach. As it is an online platform, location at EU level could not create any distance between repairer and consumer. An EU platform would involve a single cost, while if at national level, the costs are hugely multiplied. For countries with smaller populations, the volume of repairers will be less and not so many available to compare in a particular locality, therefore, investment in a platform may not bring any great benefits. Also, as registration is voluntary, how many repairers may engage with the platform, particularly, very small local repairers, is not known. The advantages of setting up and maintaining a platform at national level are aspirational rather than objective at this stage.</p> <p>An EU platform also provides business opportunities for SME's providing repair services. Some repair markets are so niche and specialised that repairers would require online visibility within the internal market to achieve an economically viable level of economies of scale.</p> <p>MT</p> <p>Malta would consider an EU level platform as the most appropriate option. Such a platform would be without prejudice to the creation of similar platforms at national level.</p>
Question 11:	<p>EL</p> <p>We support the provision in article 7 (2).</p>

<p>Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?</p>	<p>HR At this point HR does not see Article 7 paragraph 2 problematic.</p> <p>SK We do not support the functionalities mentioned in point 11. This is due to our position on the establishment of the platform and due to the increased costs associated with extending the platform functionalities. The platform should only be required to include a few basic functionalities (the range of functionalities should remain minimal, especially if the establishment of platforms at national level is retained; the extension of functionalities should remain at the discretion of the Member States).</p> <p>IT Yes, we do support this inclusion as it has the potential to yield positive effects for the repair market, both in terms of demand and supply. Furthermore, the different actors (professional repairers, other type of community-repairers, refurbishers, seller of refurbished goods) should be stored in separate sections of the platform.</p> <p>SI We don't have strong preference regarding this question.</p> <p>FR The aim of the proposed directive is to encourage greater durability of goods. For the French authorities, the idea of connecting consumers and repairers via an online platform fully meets this objective.</p> <p>However, allowing major economic operators specialising in the sale of second-hand and reconditioned goods and professionals in the purchase of defective goods to appear on such a site seems to fall short of this objective. Indeed, if consumers are encouraged to resell their goods or buy new ones, the platform could be diverted from its initial objective. The lure of change or the possibility of financial gain could in fact drive consumers away from the search for a repairer.</p>
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This is why the French authorities recommend that the platform should concentrate on finding repairers, if possible local ones, in order to best meet the ambition of more sustainable consumption.

DE

A search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment is very useful. However, it should be possible, that these search functions are offered by different platform operators (i.e. for repair and refurbishment/purchasers). In case the obligation under the Directive is fulfilled by operating two different platforms, these different platforms should be linked with each other.

FI

Taking into account our comment on question 10, FI could secondarily support the provision in Article 7(2) as a voluntary option.

CZ

As we are sceptical about the obligation to establish a platform, we cannot really express our position here. However, our future attitude would depend on the level at which the platform is established and operated.

LV

The idea could be supported, as it would make it easier for consumers to hand over their goods, but, as mentioned above, we believe that this platform should be created at the EU level (see the answer to question 10). In addition, we believe that information about repaired and used products should be placed on the platform voluntarily, and not as a mandatory part of the platform.

EE

As a general remark, we prefer an EU-wide platform. For the sake of compromise, we might accept a platform at a Member State level if its creation would be voluntary for Member States. In our view, the creation of a function for the platform as described in Article 7(2) should also remain optional. Creating the platform incurs different costs. In smaller Member States, like Estonia, there may not be that many repairers from whom it would be possible to receive enough registration fees to cover the

	<p>costs of creating and maintaining the platform. Most businesses in Estonia are also SME-s who might not be ready to pay a fee for registration. Thus, creating an online platform alone would be costly for us, and each additional feature would be even more costly.</p> <p>There would also incur costs for supervision. When a Member State creates an online platform, the responsibility for the accuracy of the data would most likely fall to the Member State.</p> <p>Therefore, for all the reasons above, the online platform itself and the function described in Article 7 paragraph 2 should be made voluntary in the absence of a single EU-wide online platform.</p> <p>LU</p> <p>Luxembourg believes that offering a search for sellers of refurbished goods and buyers of defective goods intended for refurbishment should not be an obligation on the platform, but that it should remain a voluntary option for the Member State to include these categories.</p> <p>DK</p> <p>We can support the proposed function in its existing form as a non-voluntary option.</p> <p>PT</p> <p>Yes.</p> <p>PT supports the development of refurbishment if it is ensured that the actor performing refurbishment is professional and complies with product safety and other relevant legal requirements.</p> <p>IE</p> <p>Yes, the provision and promotion of a market for refurbished or worn goods should be encouraged particularly in terms of online accessibility and findability. The search function could be expanded to include a brand category for consumer's ease of reference and findability.</p> <p>MT</p> <p>Yes, Malta supports the inclusion of a search function. However, an exhaustive list of functions within the operative part of the text is not considered ideal. The text should provide the required flexibility for further future development and innovation.</p>
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<p>Question 12: Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.: 12.1 Exceptions. If so, which one(s)? 12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)? 12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension? 12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?</p>	<p>EL We agree with the provision in article 12 as it stands.</p> <p>HR HR would like to express concern about this Article and would suggest clarifying the provision. Although we support the choice of repair and reuse of products, HR is of the opinion that such provision by which consumer rights are limited and diminished must have reasonable explanation and would propose to EC to further explain the reasons for prescribing this provision.</p> <p>Therefore, HR would suggest amendments to the provision and would suggest wording as it follows:</p> <p><i>'In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall first offer repairing shall repair the goods in order to bring those goods in conformity.'</i></p> <p>This provision could be clarified in accompanying recital 28 in sense that this offer is not binding for the consumer and that consumer may refuse the offer and request replacement.</p> <p>SK The provision largely restricts the consumer's right to choose a remedy. We are of the opinion that the consumer should have a choice and such an intervention, given the extent of the interference with consumer rights, does not add sufficient value to achieve the objectives of the Directive.</p> <p>We therefore propose to extend the consumer's rights to include a choice of other remedies such as product refurbishment. In this way, consumer rights will not be restricted and at the same time the objectives of the Directive to ensure better sustainability through longer use of the product will be promoted.</p> <p>12.2 The creation of new control mechanisms acts as an additional excessive administrative burden and prolongs the mechanisms for dealing with non-conformity of goods, therefore the added value for consumers is questionable.</p>
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12.3 We do not agree with the extension of the warranty period.

IT

Regarding art. 12, we would not support the provision as it stands.

The proposal favors the repair remedy to align with environmental protection goals. However, concerns have been raised by Italian consumer associations regarding consumer rights, as the repair process can result in a period of unavailability for the consumer. To address this, it is recommended to establish a maximum repair timeframe with compensation for any delays, specific to each product category. Additionally, consumers should have the option to request a substitute product during the repair period to minimize the negative impact of not having access to the item.

To ensure that the right to repair does not result in indirect harm to the consumer, we suggest that a maximum time limit be established for repairs, with corresponding compensation for each day of delay. This would involve setting standard maximum times for each product category (e.g., washing machines, dishwashers, cell phones, etc.). To mitigate the negative impacts associated with the non-use of the product during the repair period, we also suggest that consumers be given the opportunity to request a replacement product to use during the necessary repair period.

An extended liability period of two additional years, starting from the moment the repaired good is returned to the consumer, could be included, in order to put the repaired/refurbished good on a level playing field with a new one.

Simultaneously, the reversal period of the burden of proof could also be extended for the same duration of two additional years.

We also add that registration to the platform should remain voluntary - with some exceptions to be assessed - for the following reasons: repair is a voluntary action, mandatory registration would disadvantage smaller repairers, and it may disproportionately benefit larger repair service providers.

SI

We believe that greater responsibility for product quality and also sustainability should lie with the producer, and the aims of the proposal should be achieved without changing the current system of consumer remedies against the sellers of goods or digital content.

	<p>We cannot agree to deprive the consumer of his existing rights, we suggest rather to empower and positively motivate consumer for a more sustainable consumption.</p> <p>FR</p> <p>12.1 The French authorities reiterate their support for the provision making repair the preferred remedy over replacement when replacement is not more expensive, while accompanying it with compensatory measures favourable to the consumer, which are set out in the answers to the questions below.</p> <p>12.2 The French authorities are in favour of ensuring that repairs are not the result of an arbitrary choice by the seller, but rather that the assessment of their cost can be traced (in writing or on a durable medium). They reiterate their desire to strengthen the system by introducing an obligation for the trader to be transparent about the analysis of the defect and the determination of the cost of repair. The professional would thus be obliged to provide the consumer, on request, with detailed information on the analysis of the fault and the cost of repair.</p> <p>They reiterate their proposal for a drafting amendment to this end, referred to in the reply to question 12.3 below.</p> <p>12.3 The French authorities are proposing the addition of a 6-month extension to the legal guarantee when the goods have been repaired under the legal guarantee of conformity.</p> <p>As an illustration, they may recall that, under national law, any repair carried out under the legal conformity guarantee entails a 6-month extension of this guarantee period. This measure, introduced in 2020, is designed to boost consumer confidence in repairs and encourage them to opt for this remedy.</p> <p>They therefore advocate the adoption of such a measure and reiterate their proposal to amend Article 12 of the Directive, revising Article 13 of Directive (EU) 2019/771 on the sale of goods, by adding two sentences (in red):</p>
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	<p><i>“In Article 13(2) of Directive (EU) 2019/771 the following sentence is added:</i></p> <p><i>‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods in order to bring those goods in conformity.’</i></p> <p><i>‘Any goods repaired under the legal guarantee of conformity benefits from a six-month extension of this guarantee.’</i></p> <p><i>‘Upon request from consumers, sellers shall provide detailed information about the product failure analysis and the repair cost evaluation.’”</i></p> <p>12.4 The French authorities support the extension of the period of presumption of anteriority of the defect over this extended warranty period in the event of repairs, in order to facilitate the implementation of the legal guarantee of conformity.</p> <p>DE</p> <p>One option could be to delete Article 12 altogether, as the additional value seems limited, but are still in the process of forming an opinion on this question.</p> <p>12.1 See above</p> <p>12.2 See above</p> <p>12.3 See above</p> <p>12.4 See above.</p> <p>FI</p> <p>FI does not support the provision in its current form as it is not clear enough. See our comments below.</p>
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	<p>12.1.: In accordance with the current Article 13(2) of the SGD the consumer may choose between repair and replacement. Repairing the goods as a priority, when repairing is cheaper than replacement, could cause significant inconvenience for the consumer in some cases. Thus, FI thinks that the proposed provision should be clearer, and at least in situations where the repair would cause “significant inconvenience” to the consumer, the consumer should retain the right to replacement even though the repair would be cheaper for the seller than delivering non-defective goods. And this should be clarified in the proposal – either in the operative part of the text or at least in the recitals. This is a key question for FI.</p> <p>12.2.: FI thinks it would be difficult to introduce reliable control mechanisms on the assessment of the costs of repair.</p> <p>12.3.: As a general comment, FI does not support the idea of amending the current system of legal guarantee (of conformity). An extended liability period would not fit well in systems (such as FI) where no exact liability period exists but where the period is determined based on the goods concerned, depending on e.g. the expected lifespan or durability of the product. Furthermore, we note that those Member States which have a specific liability period, two years or more, may extend it on the grounds of Article 10(3) of the SGD.</p> <p>12.4.: As FI does not support the idea of amending the provisions on liability period, we do not deem it necessary to amend the provision for the period for reversed burden of proof.</p> <p>CZ</p> <p>We do not support this provision as we have doubts about its applicability and practical functioning. The question is, who is the subject that really decides what remedy is to be provided? Is it a consumer (who can besides claim a significant inconvenience of a repair)? Is it a seller, or is it a manufacturer (who can assess the costs of a repair/replacement)? It is thus doubtful if this amendment leads to different effects than the current regime under SGD. Therefore, we propose deleting this Article.</p> <p>12.1 We do not see any exceptions as a possible compromise.</p>
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	<p>12.2 We are not sure what the control mechanisms would mean in practice. Specifically, whether the control mechanism should also decide whether the good would be brought into conformity by repair or replacement. Should this mechanism be provided by national authorities, business/manufacturers associations or sellers themselves? In this context we would find it useful if the Commission could specify who is actually able to determine the cost of repair or replacement, whether it's the seller, the manufacturer or somebody else.</p> <p>12.3 We are not in favour of this measure. We wonder how we would prevent traders from becoming trapped in a spiral of unlimited liability period. The national legislation is sufficient as it considers the repair as service under contract for work. In such a case a contractor is liable for defects in the repair or modification made when the consumer takes over the item. If the defects are obvious, they should be claimed immediately. Those which will only become apparent later, can be claimed within a period of up to 24 months. The repairer is also in the position of a trader in relation to items and parts used for the repair, therefore liable for any defects that will become apparent during the 24-month period.</p> <p>12.4 We cannot agree. Member States may maintain or introduce one- or two-year period for the reversal of the burden of proof under Article 11(2) SGD. If there is another rule applicable only for repaired goods, we fear this would result in high complex consumer law that would be hard to comprehend. The rules must be as simple as possible.</p> <p>LV</p> <p>We do not agree with the proposed wording of Article 12 and call for a review of the entire wording of Article 13 of Directive 2019/771, because this addition to the article creates contradictions - the consumer can choose repair, but if the cost of repair is the same or less than the replacement of the product, repair becomes a mandatory obligation, so the consumer has a choice with conditions.</p> <p>12.1. We do not consider it necessary to single out any individual exceptions, it is too complicated and useless in this context;</p> <p>12.2. Latvia cannot support the idea that someone should control something again. This issue could be resolved in a similar way to how disputes are currently resolved in the Consumer Disputes Alternative Resolution Directive (2013/11/EU), respectively, if the consumer and the repairer cannot agree on what to do with the damaged product, which is considered an individual dispute, then both</p>
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parties turn to and individually resolve the specific issue with the relevant national supervisory authority;

12.3. We believe that a good solution could be that the warranty period is extended for the time that the product has been under repair - that is, either the warranty period is extended for the days that the product has been at the repairer, or the warranty period is frozen for the duration of the repair. Such solution would also serve as an incentive for repairers not to subjectively and artificially extend the duration of the repair;

12.4. See the answer to the previous paragraph.

EE

To us, it is not clear enough what Article 12 will entail. As it is worded in the Commission's proposal, we see several problems. According to recital 28, the consumer should remain entitled to choose repair over replacement, unless repair would be impossible or it would impose disproportionate costs on the seller as compared to replacement. To us, however, this does not appear from the proposed amendment in this Article. According to the wording of this Article, instead, it seems that the consumer's right of choice will be completely lost, and the decision whether to repair or replace the item is up to the seller depending on the costs.

To us, it is not clear whether the idea under Article 12 was to give the seller just an opportunity to refuse replacing the product, or was the intention to impose an obligation on the seller to refuse to replace the product, if the costs for replacement are equal to or greater than the costs for repair. Regardless of which approach the Commission had intended, the amendment will change the nature of consumer's rights in a situation where the seller has breached the sales contract. For the consumer, it is already inconvenient if the seller has breached the contract by handing over a product that does not meet the conditions of the contract. For us, it is important that the consumer's interests are also protected in such situations. It is crucial that the seller's decision to repair the product instead of replacing it does not outweigh the consumer's legitimate interest in receiving a product that complies with the terms of the contract at a time convenient for the consumer and according to his/her needs.

Article 12 as it stands will also increase the administrative burden on sellers. Under Article 12, sellers would have to make a detailed assessment in each individual case of whether it is cheaper to repair or replace the product.

	<p>For the above reasons, we propose that the final decision whether to repair or replace the product should be made by the consumer. Therefore, it could be instead stipulated that the seller must first offer the consumer to repair the product, if the repair is cheaper than replacing the item, but the final decision would be up to the consumer.</p> <p>Regarding questions 12.3 and 12.4, we have only recently transposed the Sale of Goods Directive and we reached a political agreement on the liability period and reversal period of the burden of proof. We do not think we should reopen the discussion on these issues.</p> <p>LU</p> <p>12.1 No, the SGD text already includes exceptions. Generally speaking, with the exception of the choice left to the consumer in the context of bringing the goods into conformity (repair instead of replacement), which has been evaluated as part of the work on this directive, we believe that the R2R directive is not intended to reform the existing SGD regime.</p> <p>12.2 No, we do not see added value on introducing specific control mechanisms on the assessment of the costs of repair as far as a similar assessment is already carried out in the context of the SGD, without any specific control mechanism, for example, when assessing whether the cost of the remedy chosen would be disproportionate for the seller (article 13, paragraph 2).</p> <p>12.3 Luxembourg is open to reflect on measures or incentives in order to rebalance the rights of consumers.</p> <p>12.4 Luxembourg is open to reflect on measures or incentives in order to rebalance the rights of consumers.</p> <p>DK</p> <p>We can overall support the proposed amendment to the Sale of Goods Directive (2019/771) promoting repair as a legal remedy within the liability period of the seller.</p> <p>However, we believe that there is room for clarification regarding the legal implications of difficulties regarding the assessment of whether repair is cheaper than replacement and the parties' freedom to agree on replacement despite the costs being the same or higher.</p>
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PT

As already mentioned, PT has reservations regarding the amendment to Article 13(2) of Directive (EU) 2019/771, first of all regarding the imposition of repair in case of lack of conformity of the good, thus eliminating the current solution that allows the consumer to choose between repair and replacement.

PT considers that this provision presents several problems of interpretation. Firstly, it is not clear how the solution presented is compatible with the current Article 13(2) of Directive 2019/771. Furthermore, recital 28 does not clarify the link between the new provision introduced by Article 12 and the judgment of “*disproportionality*” currently laid down in Directive 2019/771. It is not clear how the judgement of “*disproportionality*” can be of assistance when the provision imposes reparation on the mere assumption that its cost is equal to that of replacement.

On the other hand, in PT's view, it is essential to ensure that the incentive to repair does not result in a decrease in the current level of protection of the rights and interests of European consumers, something that, strictly speaking, results from the proposal in Article 12.

In fact, **PT considers that the strengthening of the right to repair should include real incentives, such as the extension of the guarantee period accompanied by an extension of the period for the reversal of the burden of proof (which should be aligned with the guarantee period).**

IE

The policy of promoting repair over replacement in terms of economy and environmental sustainability is clear within this provision. It has to amend Article 13 SGD regarding: ‘where the consumer may choose between repair and replacement’. It amends the SGD provision by making that choice subject to a further condition (as amended by Article 12) where it now requires the seller to repair the goods where the costs for replacement are equal to or greater than the costs for repair. As a result, the consumer may only choose replacement as a remedy when it is cheaper than repair.

This amendment does fetter the consumer remedy of choice on replacement and repair. A supporting recital at least may be required to elaborate on ways to mitigate the effect of the

	<p>amendment: e.g. sellers are encouraged or mandated to provide for temporary replacements particularly for certain goods-cars, prams, wheelchairs.</p> <p>Further, from an Irish perspective, it should be noted that Article 3(7) of the SGD states it shall not affect the freedom of Member States to allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent within a period after delivery not exceeding 30 days. As the right to reject non-conforming goods without having to agree to their repair or replacement is a long-established right under Irish consumer sales law, sections 23 and 24 of the Consumer Right Act 2022 (CRA 2022) gave effect to this regulatory option. There may be requirement or reassurance (via a recital) that the Article 3(7) has not been impacted by the Article 12 amendment, so as to preserve the full domestic (CRA 2022) scope of the short term right to terminate, (even for minor non-conformity).</p> <p>12.2 Seller should provide a proper breakdown of costs itemising costs of labour, materials spare parts. See answer to Q14 below.</p> <p>12.3 Yes, the extended period could be half the liability period pertaining for a new goods and/or to have consistency with the provisions of the SGD. Note Ireland's domestic limitation period (6 years) and short term right to reject.</p> <p>12.4 See answer to Q12.3 above.</p> <p>MT Whilst Malta is conscious of the objectives of Article 12, it is critical to strive towards a more balanced provision. It should also be clarified that the repairs should be without any costs.</p> <p>12.1 Exceptions when consumers should remain free to opt for unconditional replacement could be considered in cases concerning immediate malfunctions (or within a stipulated timeframe following delivery as indicated in Recital 19 and Article 3(7) of the Sale of Goods Directive). Another consideration could be made in the case of repeat-repairs, whereby from the second/third instance of malfunction onwards, the consumer is conferred the unconditional right for replacement.</p>
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	<p>12.2 The introduction of specific control mechanisms on the assessment of the costs of repair is not considered to bring any particular added value. We consider the model in the current Sale of Goods Directive to be a satisfactory guideline to follow.</p> <p>12.3 An extended liability would be a good incentive also for the consumer to opt for repair, particularly towards the end of the legal guarantee period. It is not considered ideal to establish an arbitrary period of extension that is applied by default and regardless of the specificities of each case. This because the appropriate period of extension would depend on factors like the type of product, expected lifespan, and nature of the repair. We therefore feel that a more flexible approach is needed that is however based on a common methodology.</p> <p>12.4 Such an extension is commendable from a consumer benefit perspective,</p>
<p>Question 13: Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771).</p>	<p>EL We think that such provision should not be included, although we understand that in the context of the freedom of contracts parties will be able to agree for replacement.</p> <p>HR Regarding HR proposal for Article 12, i.e. seller's obligation to offer a repair, HR consider that it is not necessary prescribing provision that Directive shall not prevent the seller from offering to the consumer contractual arrangements that go beyond proposed remedies for lack of conformity, because proposed change in Article 12 already implies agreement between the consumer and seller.</p> <p>SK We agree with the introduction of a provision whereby the parties may agree to a replacement even where the cost of repair is less than or equal to the replacement. However, we do not see any added value over the current legislation.</p> <p>IT Currently, the Sales of Goods Directive provides the consumer with the choice between repair and replacement. Giving consumers choice is one of the fundamental objectives of EU consumer law. Accordingly, rather than making repair the only primary remedy, other measures to promote repairs</p>

could be adopted, while preserving consumers' choice. For instance, replacement could be excluded in case of minor defects that do not impact the overall functionality or aesthetics of the product. Moreover, were consumers provided with a free temporary replacement product, they would be more inclined to opt for repair rather than replacement. Temporary replacement good shall have an equivalent functionality. Furthermore, it would be important to ensure the transferability of the guarantees on consumer goods, particularly to encourage the growth of the second-hand market and, consequently, enhance the durability of goods. It is worth noting that some sectoral studies have shown that extending the duration of legal guarantees from two to five years would lead to a mere 1-2.9% increase in prices. Such an extension would complement the proposed measures and align with the objectives of the current Directive.

SI

Yes, we generally believe it is crucial to leave the consumers the possibility to choose between repair and replacement, as long as we do not find other solutions and other positive incentives that will encourage consumers to have their goods repaired. Particularly, in case of defected non-functioning goods from the day of the purchase when cost is not relevant to consumer and repair would be more inconvenient for the consumer.

FR

The French authorities believe that this proposal runs counter to the proposal to give primacy to repair, since it empties the objective of Article 12 of its substance.

DE

Cf. answer to question 12.

FI

FI does not think an explicit provision would be necessary as the possibility is already provided for in Article 21(2) of the SGD. However, a clarifying recital could be supported.

CZ

In many cases it could be suitable solution – e.g. the goods, which shall be repaired, are vital for functioning household of the consumer, in which case the immediate replacement would be preferred, especially if the repair on the other hand would require significantly more time. We,

therefore, believe that the clear explanation should be provided; if not in the provision, then at least in a corresponding recital. However, as mentioned above, we are against Article 12.

LV

We believe that it is not necessary to regulate this issue separately, because now no one prevents the repairer and the consumer from agreeing on a different and more advantageous solution in the specific situation. By introducing such point, it could cause confusion about the cases of its application - when such individual agreements can and cannot be made.

EE

At first sight, it does not seem to us that such a provision would be necessary. The fact that Article 21(2) of the Sale of Goods Directive allows the seller to offer more favourable terms to the consumer than those set out in the Directive does not sufficiently solve the problems arising from the wording of Article 12, which are described in the answer to question 12.

LU

Luxembourg does not see the added value of such an express provision insofar as Article 21(2) is sufficient in itself.

DK

We consider that it is important to ensure clarity on this issue, which could be provided at the end of recital 28.

PT

PT preliminarily considers that this proposal could be positive for consumers. However, considering PT's understanding of the current wording of Article 12 and in view of the amendments to that provision that may still take place, PT reserves its position for the time being.

IE

Yes, on the basis that it would be a fetter on trade and might be otherwise difficult to enforce. In terms of replacement, the disposal of damaged/defective goods should have adequate channels for recycling or refurbishment or scrapping.

	<p>MT</p> <p>Malta supports the inclusion of such a provision, also because keeping this option is not expected to diminish the current consumer rights. Consumers may still opt for repair, particularly if an extended liability (as in Q12.3) is available. Consumers would not benefit from the mentioned extended liability whenever they opt for replacement, other than the suspension of the liability period in negotiations between the seller and the consumer with a view to an amicable settlement as established in Recital 44 of the Sale of Goods Directive.</p>
<p>Question 14:</p> <p>Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?</p>	<p>EL</p> <p>No, we do not think that it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair. It is a factual issue that has to be assessed on an ad hoc basis.</p> <p>HR</p> <p>HR finds possible to determine if the costs for replacement are equal to or greater than the costs for repair but is aware that there could be situations where seller would manipulate with presented cost. Therefore, it is important to prescribe obligation to the seller to present for example information of diagnostic procedure and costs of it.</p> <p>SK</p> <p>We do not think that it is possible to set general rules that will be applicable/fair for all types and kinds of goods.</p> <p>IT</p> <p>No, because the costs for replacement and repair depend on the costs-structure of the producer, the repairer or the other figures mentioned in the proposal. However, what could be done is specify who is the responsible party for determining the cost-effectiveness of repairs compared to replacements and provide guidance on the methodology to be used for such evaluations.</p> <p>That being said, if we were to define a methodology to determine if the costs for replacement are equal to or greater than the costs for repair, obtaining accurate pricing information for replacement costs in repairs is essential. This data can be sourced from market research companies or consumer associations, but it is important to consider the associated costs and legal implications. Setting a</p>

	<p>benchmark maximum price for repairs based on averages can be disadvantageous for both cheaper and top brand models.</p> <p>SI We think it is not appropriate to define a decision on replacement or repair based on costs alone. Furthermore, we also have concerns that consumer's right to replace or repair defected goods will be in practice decided based on the subjective judgement of trader regarding the level of costs as explained by the Commission at the WP meeting on 14 July.</p> <p>It is also not clear, what will happen in situations, when only a small defect is determined in the beginning, and producer considers that repair would be cheaper option but later it becomes clear that the defect is more complicated, and that the replacement would be cheaper than the repair.</p> <p>When making compares of costs of repair a cost of replacement we should be very careful to be precise, what do the cost include and which cost are excluded. Sales costs or profit margins should be excluded in the replacement costs?</p> <p>FR This would be a very useful tool, but the French authorities have no proposals to make at this point.</p> <p>DE Cf. answer to question 12.</p> <p>FI FI thinks it would be difficult to define a reliable way to determine if the costs for replacement are equal to or greater than the costs for repair.</p> <p>CZ We are against Article 12, one of the many reasons being that the provision is vague and creating legal uncertainty.</p>
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LV

This cannot be properly defined because all costs are a subjective factor and they depend on what the market price is for both spare parts and shipping costs etc., so some sort of market and price research must be done to calculate these costs. We believe that this issue could possibly be resolved within the framework of an individual dispute, as described earlier, when the parties submit evidence, and they are individually evaluated to make the most appropriate decision. Latvia is concerned about who will be the one who will carry out this activity and control its compliance - this is again an unnecessary burden for the supervisory authorities.

EE

I'm not sure how it can be determined in this Directive how to assess if the costs for replacement are equal to or greater than the costs for repair. Perhaps there should be given examples in the recitals of what sellers can count as costs when they determine the final price. For example, transport costs or the costs of purchasing the repair services, etc.

LU

No, Luxembourg thinks that the evaluation of the costs will have to be carried out on a case-by-case basis.

DK

As it depends on a number of factors, it can be difficult to determine whether the exact costs for replacement are equal to or greater than the costs for repair, e.g. sometimes the repairer will have to begin the reparation to determine the defect.

In regard to the Sale of Goods Directive, "costs" refer to immediate costs for the seller, e.g. spare parts, wages etc. We would like the Commission to clarify whether the proposal intends to amend this definition and to include factors like e.g. generation of waste, energy consumption and greenhouse gas emission.

	<p>PT PT has, for the time being, a reserve to analyze the possibility of establishing a cost measurement mechanism/criteria. Nevertheless, PT is open to the possibility of analyzing a proposal put forward by PRES.</p> <p>IE Yes, though cost of repair may need to be broken down/compartimentalised into cost of labour and cost of materials/spare parts to ascertain the repaired good's estimated comparative price against the replacement cost.</p> <p>MT Not required, as per reply to Q12.2.</p>
<p>Question 15: Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?</p>	<p>EL It could be beneficial for consumers to include in the proposal the possibility for MS (on a voluntary basis) to take measures to promote repairs, such as via the offering of repair vouchers.</p> <p>HR HR finds this proposal interesting, but we would like to know more details on how this funds and repair vouchers will function. Also, having in mind that there is possibility that establishing online platform will solely be member state's obligation, proposed measures to promote repairs could also be expensive for the Member states.</p> <p>SK We do not think it is necessary for Member States wishing to adopt such measures to set out explicit possibilities directly in the Directive.</p> <p>IT Yes, national measures could indeed offer economic incentives for repairs, such as immediate discounts or tax deductions. However, it is important to carefully compare the environmental impact of these incentives with the effects of promoting the purchase of more efficient models. This comparison helps determine whether replacing a less advanced model with a more efficient one is</p>

more environmentally beneficial than repairing the less efficient model. Simply prioritizing repairs may not always be the most environmentally sound option.

The European approach to repairability should not be based only on obligations on companies. Fostering repairability will only be successful with a smart mix of measures (e.g., legislative, and non-legislative, product or information related) including those that motivate consumers to choose repair and traders to offer repair during and beyond guarantee periods as well as those fostering skilled labour. To this end, incentives are necessary: both businesses and consumers should benefit from incentives, including financial, that make repair more affordable.

SI

We believe that MS already have the possibility to promote repairs, however, setting obligations for the MS, without providing EU funds is not the best option. We believe that it is essential to go further and think in the direction of what we can do at the EU level and comprehensively determine which financial tools and the amount of EU funds are most likely to encourage consumers to have their goods repaired. Finally, we must define the legal framework to effectively implement the proposal, or we will have measures ranging from public enforcement to civil redress actions by the consumers which will completely change the nature of the proposal from MS to MS.

We must make repairs more appealing, systematic, trustworthy, and cost-efficient for consumers and prevent early obsolescence of goods. In addition, their reparability has to be enabled. If goods are designed to be irreparable, the right to repair cannot exist.

FR

The French authorities are strongly supportive of the introduction of a new article allowing Member States to take measures at national level to promote repair.

As an illustration, in France, such a measure already exists for electrical and electronic products. A repair bonus introduced at the end of 2022 enables consumers to obtain a discount on the cost of repairs they request from a professional. The professionals eligible for the bonus label are listed on two platforms that can be consulted free of charge by consumers. The repairer is reimbursed for the

deduction from the invoice price corresponding to the bonus by the eco-organisation (extended producer responsibility scheme) for the sector concerned.

The French authorities also consider that, in order to ensure the development of repair, Member States could also be authorised to provide that, in certain cases, where the repair time exceeds X days, the repairer should be able to loan or rent a replacement item to the consumer. This provision, subject to adjustments for small businesses and independent repairers, would make it possible to prevent consumers from immediately buying a new item after a breakdown to avoid being deprived for too long of an everyday consumption item (refrigerator or washing machine, for example).

Finally, the French authorities believe that the text should explain more clearly the conditions under which Member States are authorised to maintain their national legislation, particularly where it is more advantageous to consumers. To this end, they propose the addition of a new recital:

"This Directive shall not prevent Member States from adopting provisions to promote repair outside its scope where such provisions are more favourable to consumers"

DE

This question needs to be further discussed.

FI

FI does not think it would be necessary to include an explicit provision on such measures as we are under the impression that Member States already have the possibility to take such measures.

CZ

We are ambivalent about this possibility at the moment. We reserve the right to submit our comments later during further negotiations.

LV

We believe that this proposed article will not be useful, because repairers already now can voluntarily perform such activities on their own initiative, and thus it is not necessary to regulate it

here. If it is decided to add such article to the existing proposal, then these options should not be mandatory, but voluntary, without imposing any binding obligations or requirements on the repairers.

We think that one of the options, that could be introduced, would be to inform consumers about the benefits of repairs directly in terms of sustainability e.g., in the form of a campaign, clearly indicating that if repairs are carried out, less goods are produced and subsequently thrown away. This work should also be done by producers and sellers - to inform and address consumers about the sustainability, quality, energy efficiency, etc. of goods. Regarding "vouchers" or other solutions, we currently do not see an opportunity to implement them effectively.

EE

If such a possibility is foreseen, it should certainly be voluntary because Member States can already take such measures. We see no reason why EU law should specifically provide a provision that would allow Member States to take such measures.

LU

Luxembourg thinks that references to incentives in the recitals by way of illustration might be useful, but we are not in favour of an obligation for Member States to take such measures.

DK

We would need to examine the positive and negative consequences regarding this question before we can express our opinion on this matter. It would be very helpful if Member States that already have introduced such measures could report to the Commission about their experiences, including possible environmental and socioeconomic consequences – if possible.

PT

Yes, PT considers that it would be useful to provide for such a possibility, as these measures are already common practice in some MS. Therefore, mention could be made of the possibility of providing incentives to reduce the price of repairs, such as repair vouchers or eco-modelling of the eco-values that products pay under extended producer responsibility. In fact, regarding this last example, incentives, such as charging lower eco-value rates, to design products with high reparability standards, necessarily have an impact on the promotion of repair, as well as on the choices of consumers, who may thus, in turn, choose more easily to repair their products.

	<p>IE This should be voluntary and left up to Member States to decide how to approach it.</p> <p>MT Member States should be allowed to promote and support repairs with measures that are compatible with the Directive. However, it is critical that any such provision in the directive (if added) is not prescriptive. Member States may resort to various types of measures, for instance through public procurement, awareness campaigns or tying financial incentives to repairability practices, however it is important that the text does not limit such options via the unnecessary addition of provisions.</p>
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Right to Repair

Malta replies to the Discussion Paper

1.- Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

Indeed, Malta agrees with the inclusion of definitions for both ‘repair’ and ‘independent repairer’. It is especially important to include a definition of repair to distinguish it from the refurbishment of products. Whilst any definition should clearly state that ‘repair’ should restore the full functionalities of the product and its physical integrity, Malta would be keen to see the Council Legal Service’s opinion on the ideal definitions.

2.- Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

The scope of the proposal may be retained as currently proposed.

3.- Regarding the European Repair Information Form, would you be in favor of adding any other conditions in article 4, paragraph 4? If so, which?

Malta’s priority remains to avoid burdening both consumers and repairers with excessive information requirements. The repairer is already required to provide most of the information listed in Article 4(4) with the pre-contractual requirements under the CRD. In this regard, it is important that the text is streamlined with the CRD not to create unnecessary administrative burdens and information overloads.

4.- Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

In principle, Malta maintains a view in favour of measures that promote product repair and incentivise consumers towards electing that option. In

this context, Malta observes that the cost to get a quotation for the repair of a product, is likely to constitute a significant deterrent to repair. Often and for most of the goods listed in the proposal's annex, an inspection would be necessary for the provision of an accurate quotation (with the exception of external and easily visible damage e.g., broken screen or appliance door). In the case of a malfunction, the product must be inspected. Without the inspection, there is a real risk that consumers would be provided with a worse-case-scenario product diagnosis/evaluation, which would ultimately be likelier to dissuade the consumer from repair.

Malta is not entirely confident that this issue can be fully addressed through the form. One may consider requiring more detailed pricing information on the platform.

5.- Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

Malta understands that prescriptive timelines, particularly for the assessment of the defect and to provide the repair service, can be overly burdensome, most notably for repairers but in some ways, also to consumers. A time limit within which to provide the Form could be given consideration.

Digital tools can be tapped into so as to have forms generated online, for instance by making them available to repairers through an EU platform.

6.- Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

Whilst in general, greater clarity in the text is preferable, it should be noted that if the repairer is a subcontractor of the producer, division of liability is bilaterally defined and regulated through their contractual agreement/s. Nevertheless, Malta does not object to an open discussion on division of liability being included in the operative part of the proposal text.

7.- Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

Whilst not being in outright objection to its inclusion, Malta would prefer to gain a better understanding of what the rationale for such text is – what are the expectations for its application?

8.- Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?

It is critical to remain conscious of the challenges and substantial burdens that such an inclusion is likely to bring about on micro enterprises and SMEs, especially in smaller Member States such as Malta. Smaller Member States may be able to achieve a good degree of consumer protection as well as increased sustainability through wider take up of repair in other ways, such as by supporting and incentivising local repair infrastructure and through collaboration with already established economic operators.

There should also be an obligation to have repairers in proximity of the consumer. Most of the goods listed in annex II may not be feasibly repaired at a distance. There should be an obligation on traders to ensure that there are repairers in proximity to where they are directing their sales. A trader should not be allowed to sell a product listed in annex II for which there is no repairer listed in the platform in proximity.

9.- Regarding article 6, would you further develop the information to be provided? What information would you include and why?

Malta believes that this provision should be kept in the broadest and most flexible drafting possible, leaving Member States free to act in whatever way is deemed best for their local scenario and specificities.

10.- In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?

Malta would consider an EU level platform as the most appropriate option. Such a platform would be without prejudice to the creation of similar platforms at national level.

11.- Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

Yes, Malta supports the inclusion of a search function. However, an exhaustive list of functions within the operative part of the text is not considered ideal. The text should provide the required flexibility for further future development and innovation.

12.- Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

Whilst Malta is conscious of the objectives of Article 12, it is critical to strive towards a more balanced provision. It should also be clarified that the repairs should be without any costs.

12.1 Exceptions. If so, which one(s)?

Exceptions when consumers should remain free to opt for unconditional replacement could be considered in cases concerning immediate malfunctions (or within a stipulated timeframe following delivery as indicated in Recital 19 and Article 3(7) of the Sale of Goods Directive). Another consideration could be made in the case of repeat-repairs, whereby from the second/third instance of malfunction onwards, the consumer is conferred the unconditional right for replacement.

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

The introduction of specific control mechanisms on the assessment of the costs of repair is not considered to bring any particular added value. We consider the model in the current Sale of Goods Directive to be a satisfactory guideline to follow.

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

An extended liability would be a good incentive also for the consumer to opt for repair, particularly towards the end of the legal guarantee period. It is not considered ideal to establish an arbitrary period of extension that is applied by default and regardless of the specificities of each case. This because the appropriate period of extension would depend on factors like the type of product, expected lifespan, and nature of the repair. We therefore feel that a more flexible approach is needed that is however based on a common methodology.

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

Such an extension is commendable from a consumer benefit perspective,

13.- Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771

Malta supports the inclusion of such a provision, also because keeping this option is not expected to diminish the current consumer rights. Consumers may still opt for repair, particularly if an extended liability (as in Q12.3) is available. Consumers would not benefit from the mentioned extended liability whenever they opt for replacement, other than the suspension of the liability period in negotiations between the seller and the consumer with a view to an amicable settlement as established in Recital 44 of the Sale of Goods Directive.

14.- Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

Not required, as per reply to Q12.2.

15.- Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

Member States should be allowed to promote and support repairs with measures that are compatible with the Directive. However, it is critical that any such provision in the directive (if added) is not prescriptive. Member States may resort to various types of measures, for instance through public procurement, awareness campaigns or tying financial incentives to repairability practices, however it is important that the text does not limit such options via the unnecessary addition of provisions.



Council of the European Union
General Secretariat

Brussels, 03 August 2023

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NOTE

From:	General Secretariat of the Council
To:	Working Party on Consumer Protection and Information (Attachés) Working Party on Consumer Protection and Information
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 - Member States comments on PRESIDENCY DISCUSSION PAPER WK 9524/23

Delegations will find attached Member States comments on the Presidency Discussion Paper WK 9524/23.

A 2 columns table with the compilation of all comments is also provided.

Presidency discussion paper

Right to Repair

(24 July 2023)

Slovenia

We would like to thank the Presidency for the preparation of the discussion paper that points out relevant open questions.

We fully support the Spanish Presidency's ambitious goals regarding this proposal, but we would like to emphasise that we should continue negotiations of this file very carefully and improve the proposed text to avoid unwanted consequences of the provisions for consumers and their level of protection in MS.

1. Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

Yes, we consider it useful to include a definition of “repair” in this Directive, since also “refurbishment” is defined. We wonder what is the ratio behind the decision to only include definition of refurbishment in the proposal since both terms are defined in the Ecodesign for Sustainable Products Regulation proposal? We have statutory authorizes services provides which include repairers for certain types of goods. It would be sensible to define independent repairers if certain obligations of the proposal differ from the obligations regarding other repairers or apply only to them. Secondly, we must ensure access of independent repairman to replacement part and information if we want an effective competition and a growth in repair service market.

2. Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

Like already explained Slovenia has a statutory functioning system of providing after-sales services, including repair for certain types of goods. For these types of goods producer or undertakings responsible for distribution or the sales of goods, have to provide authorized service providers - repairers, repair and maintenance of products, replacement parts and attachment devices for at least three years after the expiry of guarantee period (1 + 3 years).

To our understanding the proposed Directive and current Slovenian consumer legislation do not overlap and are in fact two parallel systems from which consumers can benefit mutually. However, if our understanding is not correct, we believe that the scope of the proposal and namely much more modest range of goods than in Slovenian legislation, will consequently reduce the level of rights of Slovenian consumers. In such a case the scope of the proposal needs to be adapted to fit only the goods listed in the proposal.

We believe that provisions of MS more favourable to consumers should be preserved.

3. Regarding the European Repair Information Form, would you be in favour of adding any other conditions in article 4, paragraph 4? If so, which?

We have concerns about the reasonableness of the Form, as it may represent an administrative burden that does not establish the obligation between consumer and repairer to enter into a repair contract. Moreover, EU consumer legislation already now contains comprehensive information obligations, which are also applicable to repair services. If there is sufficient competition on the market having a form to make comparisons between the offers is reasonable. However, in the market of providing repairs there is not a lot of providers, many times when you have nothing to compare, such a form seems a deterrent for consumers and providers repair and rather choose replacement or buying a new product.

4. Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

Yes, we support this idea if the filling in of the form has a price. However, we believe that the provision of the form should be free of charge to encourage consumers to seek multiple repair options and compare them. The form is in the end a detailed offer to execute a repair and offers usually are not. Nobody will charge a consumer for an offer to buy/sell a new product instead of repairing the old one. In our opinion, the repairer could only charge for the actual costs where a significant assessment of the defect is necessary. The distinction between administrative costs of the preparation of the form and the costs of the diagnostics of the defect has to be very clearly presented. The distinction between administrative costs of the preparation of the form and the costs of the diagnostics of the defect has to be very clearly presented.

5. Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect? If so, in which cases? Which should be the timeframe?

Yes, we support the idea of introducing time limits, but at the same time we believe that time limits without efficient enforcement, respectively with effective and enforceable sanctions are meaningless. Time limits need to be in place to achieve a fast repair or the consumer will choose another option.

6. Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

We believe that from the consumer's point of view it is not essential who bears the liability, but in our opinion the producer should have the obligation to bear the liability. However, the division of liability and the redress options of traders in the supply chain was introduced for non-conformity of goods, digital services, and digital content, which mutatis mutandis should be applicable also in the case of the proposal.

7. Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

Considering that the Slovenian translation of this expression is a bit unusual and can therefore lead to different interpretations, we think it is better to explain it in the recitals.

8. Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? Is so, why?

Yes, we are in favour of the idea. It has to be ensured that a repair is as accessible to the consumer as a purchase of a good and that it can be done in an accessible, affordable and easy way for the consumer. However, fulfilment service provider can be responsible for the repair only under the condition when no other economic operator (manufacturer, importer, authorized representative) is established in the Union (as article 4, paragraph 2 (d) of Market Surveillance Regulation EU 2019/1020).

9. Regarding article 6, would you further develop the information to be provided? What information would you include and why?

We support the proposal of NL, LV and DK to include additional information on the manufacturer's repair obligation in the digital product passport based on the Ecodesign for Sustainable Products Regulation proposal.

10. In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with access point on the EU portal. Why?

In our view the most efficient way would be establishing an online platform on EU level with access point to the voluntary national portal (if this kind of portal already exists or will exist in the future). We believe this will ensure easier access on stop shop access to information, EU wide recognition by consumers and choice.

11. Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

We don't have strong preference regarding this question.

12. Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

12.1. Exception. If so, which one(s)?

12.2. Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

12.3. An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extensions?

12.4. An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

We believe that greater responsibility for product quality and also sustainability should lie with the producer, and the aims of the proposal should be achieved without changing the current system of consumer remedies against the sellers of goods or digital content.

We cannot agree to deprive the consumer of his existing rights, we suggest rather to empower and positively motivate consumer for a more sustainable consumption.

13. Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/777?

Yes, we generally believe it is crucial to leave the consumers the possibility to choose between repair and replacement, as long as we do not find other solutions and other positive incentives that will encourage consumers to have their goods repaired. Particularly, in case of defected non- functioning goods from the day of the purchase when cost is not relevant to consumer and repair would be more inconvenient for the consumer.

14. Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the cost for repair? If so, how?

We think it is not appropriate to define a decision on replacement or repair based on costs alone. Furthermore, we also have concerns that consumer's right to replace or repair defected goods will be in practice decided based on the subjective judgement of trader regarding the level of costs as explained by the Commission at the WP meeting on 14 July.

It is also not clear, what will happen in situations, when only a small defect is determined in the beginning, and producer considers that repair would be cheaper option but later it becomes clear that the defect is more complicated, and that the replacement would be cheaper than the repair.

When making compares of costs of repair a cost of replacement we should be very careful to be precise, what do the cost include and which cost are excluded. Sales costs or profit margins should be excluded in the replacement costs?

15. Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

We believe that MS already have the possibility to promote repairs, however, setting obligations for the MS, without providing EU funds is not the best option. We believe that it is essential to go further and think in the direction of what we can do at the EU level and comprehensively determine which financial tools and the amount of EU funds are most likely to encourage consumers to have their goods repaired. Finally, we must define the legal framework to effectively implement the proposal, or we will have measures ranging from public enforcement to civil redress actions by the consumers which will completely change the nature of the proposal from MS to MS.

We must make repairs more appealing, systematic, trustworthy, and cost-efficient for consumers and prevent early obsolescence of goods. In addition, their reparability has to be enabled. If goods are designed to be irreparable, the right to repair cannot exist.



Danish written comments on the discussion paper on the Right to Repair directive (WK 9524/2023)

Question 1 – Do you consider it useful to include a definition of “repair” and “independent repairer” If so, how would you define them?

We find it important to define repair because it would define the scope of the directive and clarify the rules. The differentiation between repair, re-manufacture and refurbish means that it is important to clearly specify when something is within the scope of the directive.

We recognize that the definition is not needed for the measures in article 5 about the obligation to repair for targeted products and targeted defects. However, in our opinion it remains highly relevant to have a clear definition for other measures in the directive (e.g. the repair form in article 4 and the online platform in article 7).

We would strongly recommend using the definition from the Proposal for the Ecodesign Regulation, which will ensure coherence between the two pieces of legislation. This could be achieved by inserting:

“1a. ‘repair’ means repair as defined in article 2 point (20) of Regulation [on the Ecodesign for Sustainable Products];”

We are flexible in terms of the definition of independent repairer.

Question 2 – Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

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We prefer clarifying the scope of the directive by inserting a definition of repair (see our response to question 1), but do not believe that it should be changed further at the moment.

Question 3 – Regarding the European Repair Information Form, would you be in favor of adding any other conditions in article 4, paragraph 4? If so, which?

We are flexible, but consider that further conditions should only be included in case that they have value for the consumer. Furthermore, we find it important that the consumer is not overloaded with information.

Question 4 – Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

Our main priority is to clarify the Commission's intention by clearly stating that the repair form should be free of charge as a starting point. By not including such wording, there is a risk that it would become another venue for making profit, which may hamper the effectiveness and efficiency of the initiative. Hence, there is a need to clearly state that the repair form should be free of charge and that any costs related to the examination can be covered.

We would need to examine further whether these costs should be deducted.

Question 5 – Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

We are cautious regarding setting standardized time limits in this directive given that the directive in principle covers all consumer products and many different types of defects. However, the period in which the consumer is waiting should always be kept at a minimum in order to promote repair as an attractive remedy.

Question 7 – Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

It should be noted that the Danish version of the proposal does not contain a similar wording to “or another kind of consideration” in the article.

We find that it is important to clarify the meaning of the wording “or another kind of consideration” if the producer should be able to require so. This could be done in the recital while the expression is kept in the article.

Question 9 – Regarding article 6, would you further develop the information to be provided? What information would you include and why?

Information should be provided to the consumer in an easily accessible and understandable manner. Ideally, it would be standardized across Member States to ensure that consumers would be able to find the information across the EU.

One obvious way to make the information available could be the digital product passport from for example the Ecodesign Regulation for those product groups covered along with relevant information such as repairability. At the WP Meeting on 14 July, the Commission was positive towards the idea of using the digital product passport to provide the information but still needs to clarify whether it is a possibility, and we are looking forward to hearing what the Commission finds and which aspects are being clarified.

The provisions of the proposal regarding consumer information should in general be thought together with the information requirements in for example the new Digital Product Passport in the Ecodesign for Sustainable Products Regulation (ESPR).

Question 10 – In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (III) national level with an access point on the EU portal. Why?

We consider that a market driven approach would be the best way forward. However, we have a scrutiny reservation regarding the choice between the above-mentioned models.

Question 11 – Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find

sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

We can support the proposed function in its existing form as a non-voluntary option.

Question 12 – Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

We can overall support the proposed amendment to the Sale of Goods Directive (2019/771) promoting repair as a legal remedy within the liability period of the seller.

However, we believe that there is room for clarification regarding the legal implications of difficulties regarding the assessment of whether repair is cheaper than replacement and the parties' freedom to agree on replacement despite the costs being the same or higher.

Question 13 – Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771)

We consider that it is important to ensure clarity on this issue, which could be provided at the end of recital 28.

Question 14 – Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

As it depends on a number of factors, it can be difficult to determine whether the exact costs for replacement are equal to or greater than the costs for repair, e.g. sometimes the repairer will have to begin the reparation to determine the defect.

In regard to the Sale of Goods Directive, "costs" refer to immediate costs for the seller, e.g. spare parts, wages etc. We would like the Commission to clarify whether the proposal intends to amend this definition and to include

factors like e.g. generation of waste, energy consumption and greenhouse gas emission.

Question 15 – Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

We would need to examine the positive and negative consequences regarding this question before we can express our opinion on this matter. It would be very helpful if Member States that already have introduced such measures could report to the Commission about their experiences, including possible environmental and socioeconomic consequences – if possible.

HR COMMENTS TO ES PSY DISCUSSION PAPER ON THE RIGHT TO REPAIR PROPOSAL (doc. WK 9524/23)

1. Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

HR is of the opinion that there is no need for including the definition of “repair” into the Proposal since the institute of repair is well known in EU acquis and the national legislation of the Member States. However, we would find useful to clarify the institute of “re-furbishment” (Article 2, point 9 of the Proposal) and explain more its distinction with the “repair”.

Regarding the definition of “independent repairer”, HR considers necessary to clarify notion of the “independent repairer” mentioned in Article 5 paragraph 3 in relation with the definition of the “repairer” in Article 2 paragraph 2. Therefore, we would like the clarification why does Article 5 paragraph 3 includes only independent repairers and not repairers as defined in Article 2 paragraph 2. If the intention of EC was to make distinction between those two repairers, then HR considers important to clarify it and include the notion of the “independent repair” into the definitions in Article 2 paragraph 2.

2. Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

HR could support the modification of the scope of the Proposal in the sense that text of the Article 1 should clarify the applicability of the Directive on the goods listed in the Annex II. Regarding Annex II we have no proposals to broaden or narrow the list at this point in time.

3. Regarding the European Repair Information Form, would you be in favor of adding any other conditions in article 4, paragraph 4? If so, which?

HR considers important prescribing in which language conditions of repair in European Repair Information Form must be presented to the consumer, with regards to the Article 5 paragraph 2 of the Proposal.

Therefore, HR suggest following amendment of the provision:

*“The European Repair Information Form shall specify the following conditions of repair in a clear and comprehensible manner **in a language easily understood by consumers.**”*

In addition, we would like to propose adjustment in the wording of the condition set out in point b).

It is necessary to clarify the condition regarding the provision of information on the possibilities of consumer communication with the repairer through *other means* of online communication. It is necessary to specify that other means of online communication should include only those means of communication that enable consumers to store the

information in such manner that it is available for later use, including data on the date and time of communication, to avoid any changes of the content and the time when the communication took place.

Therefore, we suggest wording in the point b) as it follows:

*b) the geographical address at which the repairer is established as well as the repairer's telephone number and email address and, if available, other means of online communication **which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a durable medium, the information shall also include details of those other means, and which enable the consumer to contact, and communicate with the repairer quickly and efficiently;***

4. Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

HR could support the proposal of including the costs for providing European Repair Information Form into the costs of the repair but would suggest to first clarify provision (Article 4 Paragraph 3) since it is not clear what term necessary cost covers. Does this cost refer to the cost regarding the diagnostic procedure?

Also, who will monitor whether costs determined in each specific case are within limits of necessary costs as prescribed by the Proposal. We would like an explanation how those costs can even be questioned? HR recommends and would propose clarifying the provision in the accompanying recital 9.

5. Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

HR considers that the provision about European Repair Information Form should be specified more precisely.

Therefore, HR suggests considering prescribing the time limit in which the repairer is obliged to provide such Information Form in Article 4 Paragraph 1 of the Proposal.

In this regard, HR is also of the opinion that it would be necessary to determine the form of the consumer's request and would suggest prescribing written form.

Having consumer's request in written form would help determine the moment from which repairer's obligation to provide European Repair Information Form could start.

Regarding the condition, set out in the Article 4 point f), that prescribes the obligation for the trader to inform consumer about the estimated time needed to complete the repair, HR would suggest deleting this provision.

Providing with information on average time to complete the repair wouldn't be possible for all types of repairs needed what makes this obligation too burdensome for the traders.

Moreover, there will be reasonable cases when it'll take much more time than estimated to repair goods (e.g. supply chain of spare parts disruption). Taking into consideration consumers expectations and high requirements of professional diligence for the traders, traders should anticipate such cases when giving information on average time. Consequently, providing with inaccurate information on the average time should be sanctioned by national law what makes this obligation excessive and disproportionate. Therefore, we propose to delete it.

6. Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

HR is of the opinion that relation between producer and subcontractor is subject of the contractual law and that their relation and mutual obligations are not in consumer's primary interest.

7. Do you believe the expression "or another kind of consideration" in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

HR considers necessary to specify the provision in Article 5 paragraph 1, especially part of the provision that allows the producer to repair the product at the consumer's request in exchange for another kind of consideration. Wording "another kind of consideration" needs to be specified more clearly since it is not clear what is another type of compensation that the consumer would be required to pay to the producer when repairing goods. Therefore, HR recommends clarifying the provision in the accompanying recital 12 or alternatively, deleting the expression.

8. Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?

HR does not consider this necessary to be included in the Proposal, due to the fact that the current proposal offers adequate obligation to repair in all circumstances. However, we might be flexible if this proposal is explained in more comprehensive and adequate manner.

9. Regarding article 6, would you further develop the information to be provided? What information would you include and why?

At this point HR does not have any comments on this provision.

10. In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?

HR is of the opinion that setting up a national platform that will connect consumers with repairers, is useful tool which would help consumers to assess and compare the merits of different repair services. Although it could encourage consumers to choose repair instead of buying new goods, when products become defective, HR considers that formation of

such platform would demand significant financial support. Therefore, in order to efficiently implement the platform in question, HR proposes setting up a platform on Union level or, as a second-best option would suggest that EC consider providing certain financial support to the member state if decided to establish platform on national level of each member state.

11. Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

At this point HR does not see Article 7 paragraph 2 problematic.

12. Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

12.1 Exceptions. If so, which one(s)?

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

HR would like to express concern about this Article and would suggest clarifying the provision. Although we support the choice of repair and reuse of products, HR is of the opinion that such provision by which consumer rights are limited and diminished must have reasonable explanation and would propose to EC to further explain the reasons for prescribing this provision.

Therefore, HR would suggest amendments to the provision and would suggest wording as it follows:

*'In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller **shall first offer repairing** ~~shall repair~~ the goods in order to bring those goods in conformity.'*

This provision could be clarified in accompanying recital 28 in sense that this offer is not binding for the consumer and that consumer may refuse the offer and request replacement.

13. Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771

Regarding HR proposal for Article 12, i.e. seller's obligation to offer a repair, HR consider that it is not necessary prescribing provision that Directive shall not prevent the seller from offering to the consumer contractual arrangements that go beyond proposed remedies for lack of conformity, because proposed change in Article 12 already implies agreement between the consumer and seller.

14. Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

HR finds possible to determine if the costs for replacement are equal to or greater than the costs for repair but is aware that there could be situations where seller would manipulate with presented cost. Therefore, it is important to prescribe obligation to the seller to present for example information of diagnostic procedure and costs of it.

15. Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

HR finds this proposal interesting, but we would like to know more details on how this funds and repair vouchers will function. Also, having in mind that there is possibility that establishing online platform will solely be member state's obligation, proposed measures to promote repairs could also be expensive for the Member states.

Discussion paper in view of the meeting of 14 July 2023

Right to Repair

Slovakia

1. We support the introduction of a definition of "repair".

2. -

3. We do not support the introduction of a European Information Form. The provision of a form imposes an unnecessary burden on repairers and an increase in repair costs for consumers. At the same time, following Article 5 of the CRD, the consumer will have to bear the costs of providing the repair information that he should have received as part of the pre-contractual information under Article 5 of the CRD. The directive thus introduces an additional financial burden on consumers in relation to the repair of a product compared to the current situation, which we consider undesirable.

In this respect, we do not support the extension of Article 4 to include additional conditions, nor do we support the proposals in questions 4 and 5.

6. There is no need for a change in the legislative text, provided there is a clear definition in the recital.

7. If the phrase "or other kind of consideration" is retained in Article 5(1), there is a need for a consistent explanation in the recital of what the phrase represents.

8. We do not agree with the extension of the subjects under point 8. A potential extension should be preceded by a business impact analysis.

9. We consider the information in Article 6 to be sufficient. We do not support their extension.

10. We support the establishment of a platform at EU level.

11. We do not support the functionalities mentioned in point 11. This is due to our position on the establishment of the platform and due to the increased costs associated with extending the platform functionalities. The platform should only be required to include a few basic functionalities (the range of functionalities should remain minimal, especially if the establishment of platforms at national level is retained; the extension of functionalities should remain at the discretion of the Member States).

12. The provision largely restricts the consumer's right to choose a remedy. We are of the opinion that the consumer should have a choice and such an intervention, given the extent of the interference with consumer rights, does not add sufficient value to achieve the objectives of the Directive.

We therefore propose to extend the consumer's rights to include a choice of other remedies such as product refurbishment. In this way, consumer rights will not be restricted and at the same time the objectives of the Directive to ensure better sustainability through longer use of the product will be promoted.

12.2 The creation of new control mechanisms acts as an additional excessive administrative burden and prolongs the mechanisms for dealing with non-conformity of goods, therefore the added value for consumers is questionable.

12.3 We do not agree with the extension of the warranty period.

13. We agree with the introduction of a provision whereby the parties may agree to a replacement even where the cost of repair is less than or equal to the replacement. However, we do not see any added value over the current legislation.

14. We do not think that it is possible to set general rules that will be applicable/fair for all types and kinds of goods.

15. We do not think it is necessary for Member States wishing to adopt such measures to set out explicit possibilities directly in the Directive.

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Comments by FI on the Presidency Discussion Paper on the Right to Repair Proposal (WK 9524/2023, 7 July 2023)

This document includes comments by Finland on the discussion paper distributed by the Presidency. Please note that all our comments are still preliminary and subject to a scrutiny reservation.

Question 1: Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

Comment by FI: *For the moment, FI does not deem it necessary to include any additional definitions in the proposal.*

Question 2: Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

Comment by FI: *For the moment, FI does not suggest modifying the scope of the proposal. However, it should be pointed out that the relation and scope of the obligations under the proposed new Directive and those of the SGD should be clearly defined and distinguished in the proposal.*

Question 3: Regarding the European Repair Information Form, would you be in favour of adding any other conditions in Article 4, paragraph 4? If so, which?

Comment by FI: *FI remains hesitant to introduce an obligation for the mandatory provision of the form. Even though providing the European Information Form could make it easier for the consumer to compare the services available, it could, in some cases, impose an unreasonable administrative burden on traders, as the obligation to supply the form applies to all repair services of goods, regardless of the goods concerned or the type of repair. The solution could be linking the obligation to submit the form to, for example, repair services that exceed a certain price.*

Question 4: Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

Comment by FI: *Regarding the costs of the form, FI does not find it appropriate that the repairer would be entitled to request the consumer to pay the costs for the form as the form contains also information that the service provider is already, under the current legal regime, obliged to provide without any costs to the consumer before entering the contract. FI is of the opinion that the form should be provided free of charge to the consumer. However, FI does deem it appropriate that the service provider could be entitled to request the costs incurred for examining the defect in the good in case the service provider has informed the consumer of them in advance.*

Question 5: Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

Comment by FI: *FI does not support introducing specific time limits regarding the provision of the form, the repair service or the assessment of the defect. Introducing one specific time limit suitable for all repair services would be difficult as repair services and the amount of time required vary depending on e.g. the nature of the goods that are being repaired. Also, introducing specific time limits could potentially favour larger service providers to the detriment of smaller ones. In case time*

limits are to be introduced, any specific expressions (e.g. stating the exact amount of days) should be avoided and instead flexible expressions, such as “within reasonable time”, be used.

Question 6: Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

Comment by FI: *FI is of the opinion that an addition to recitals on the division of liability between the producer and a possible subcontractor could be useful in order to clarify that the producer, although allowed to use a subcontractor, would ultimately be liable for the obligations under Article 5. The addition to the recitals could state, for instance, that regardless of whether the producer uses a subcontractor for the fulfilment of its obligation under Article 5, the producer is the one liable for the obligation vis-à-vis the consumer. However, the liability for damages and the possible division thereof should be left to be provided for on a national level.*

Question 7: Do you believe the expression “or another kind of consideration” in Article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

Comment by FI: *FI does not necessarily find it problematic to include the expression “or another kind of consideration” in Article 5. However, it could be clarified in the recitals what is exactly meant with the expression (e.g. data).*

Question 8: Regarding the cascade of obligation to repair foreseen in Article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/2020), as an economic operator responsible for the repair? If so, why?

Comment by FI: *FI does not support including the fulfilment service providers in Article 5 as imposing an obligation to provide repair services on such operators would be unreasonable and unnecessarily burdensome on the operators.*

Question 9: Regarding Article 6, would you further develop the information to be provided? What information would you include and why?

Comment by FI: *For the moment, FI does not deem it necessary to include any additional information requirements in Article 6 of the proposal.*

Question 10: In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level; (ii) EU level; (iii) national level with an access point on the EU portal? Why?

Comment by FI: *FI remains hesitant about introducing an obligation for Member States to ensure that at least one online platform exists in their territory. Although an online platform can be considered useful in the sense that it can increase consumers' awareness of repair services and possibly bring together businesses offering repair services and consumers in need of repair services, FI still suggests that the proposal should be modified to only “encourage” Member States to promote the introduction of such online platforms instead of ultimately requiring Member States to establish one. With this excessive costs for Member States for the possible deployment of online platforms could be avoided.*

Question 11: Do you support the provision in Article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment? If not, would you support it as a voluntary option? Why?

Comment by FI: *Taking into account our comment on question 10, FI could secondarily support the provision in Article 7(2) as a voluntary option.*

Question 12: Regarding Article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

12.1 Exceptions. If so, which one(s)?

12.2. Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

12.3. An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

12.4. An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

Comments by FI: *FI does not support the provision in its current form as it is not clear enough. See our comments below.*

12.1.: *In accordance with the current Article 13(2) of the SGD the consumer may choose between repair and replacement. Repairing the goods as a priority, when repairing is cheaper than replacement, could cause significant inconvenience for the consumer in some cases. Thus, FI thinks that the proposed provision should be clearer, and at least in situations where the repair would cause "significant inconvenience" to the consumer, the consumer should retain the right to replacement even though the repair would be cheaper for the seller than delivering non-defective goods. And this should be clarified in the proposal – either in the operative part of the text or at least in the recitals. This is a key question for FI.*

12.2.: *FI thinks it would be difficult to introduce reliable control mechanisms on the assessment of the costs of repair.*

12.3.: *As a general comment, FI does not support the idea of amending the current system of legal guarantee (of conformity). An extended liability period would not fit well in systems (such as FI) where no exact liability period exists but where the period is determined based on the goods concerned, depending on e.g. the expected lifespan or durability of the product. Furthermore, we note that those Member States which have a specific liability period, two years or more, may extend it on the grounds of Article 10(3) of the SGD.*

12.4.: *As FI does not support the idea of amending the provisions on liability period, we do not deem it necessary to amend the provision for the period for reversed burden of proof.*

Question 13: Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771)?

Comment by FI: *FI does not think an explicit provision would be necessary as the possibility is already provided for in Article 21(2) of the SGD. However, a clarifying recital could be supported.*

Question 14: Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

Comment by FI: *FI thinks it would be difficult to define a reliable way to determine if the costs for replacement are equal to or greater than the costs for repair.*

Question 15: Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

Comment by FI: *FI does not think it would be necessary to include an explicit provision on such measures as we are under the impression that Member States already have the possibility to take such measures.*

Traduction de courtoisie des commentaires écrits des autorités françaises sur le document de travail de la présidence espagnole concernant le droit à la réparation

(SGAE/MINUME/2023/441)

I. Preliminary remarks

The French authorities thank the Spanish Presidency for submitting the questionnaire, which will help structure debates and formulate proposals.

II. Comments on definitions and level of harmonisation (Articles 1 to 3) - questions 1 and 2

- a) On Article 1 (Subject matter, purpose and scope) – Question 2

The French authorities would like the scope to be amended to clarify that the Directive includes both measures outside the scope of the legal guarantee of conformity and measures within the scope of the legal guarantee of conformity.

Indeed, as other delegations have pointed out in their written comments, the French authorities believe that, as currently drafted, the second paragraph of Article 1 limits the scope of the Directive to defects outside the scope of the legal guarantee of conformity, despite the fact that Article 12 relates to it.

- b) On Article 2 (Definitions) – Question 1

The French authorities consider that the definition of repairer introduced in Article 2 of the initiative is suitable. However, defining the concept of independent repairer does not seem necessary for the general scheme of the text. Moreover, it could turn out to be complex since Member States may have different approaches to the concept of independence.

III. Comments on the European Form (Article 4) - questions 3 to 5

- a) On the list of information to be provided for the form – Question 3

The list of information that must be provided with the quotation is sufficiently detailed and does not call for any particular comment on the part of the French authorities.

However, the French authorities would like to ensure that **once the consumer has accepted a paid quotation** - and thus agreed to pay for it - the professional, in turn, should be obliged to provide the required service. It would not be acceptable for a professional to charge the consumer for the cost of issuing the form and then refuse to carry out the repair. As an illustration, under French law, once a quotation has been proposed by the professional and accepted by the customer, it has contractual value.

The French authorities would like to confirm with the European Commission that this logic - any quotation signed is equivalent to a contract - exists at European level. If not, they suggest amending recital 8 (in red):

*“(8) The consumer’s free choice to decide by whom to have its goods repaired should be facilitated by requesting the European Repair Information Form not only from the producer, but also from the seller of the goods concerned or from independent repairers, where applicable. Repairers should provide the European Repair Information Form only where the consumer requests that form and the repairer **intends commits** to provide the repair service or it is obliged to repair.”*

In addition, **the French authorities consider that Article 4 should be amended to strengthen consumer information regarding the existence of the form since its paragraph 1 establishes the principle that it is provided “upon request”**. In fact, they consider that stating that the consumer will be provided with the European form estimate only " upon request " will only be applicable in rare cases, as pointed out by other delegations in their written comments. Consumers are unlikely to be fully aware of their rights.

To increase the use of this form, **this provision should therefore be accompanied by an obligation on the repairer to provide information** on the existence of the quotation. The French authorities are proposing an amendment to Article 4(2), which could be modified as follows (in red):

“2. Before the consumer is bound by a contract, Repairers whom are willing to repair without being obliged to -when the request isn’t under the article 5, shall inform him on the existence of other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service.”

Recital 8 should also be amended, to be worded as follows (in red):

“(8) (...) A consumer may also choose not to request the European Repair Information Form and to conclude a contract for the provision of repair services with a repairer pursuant to pre-contractual information provided by other means in accordance with Directive 2011/83/EU of the European Parliament and the Council. In any case, the repairer shall have informed the consumer in advance, before the contract is bound, of the existence of this Form and of his right to request/use it or not.”

b) On the deduction of the quotation from the total repair bill – Question 4

The benefits for consumers of such a deduction remain to be demonstrated. Such a proposal could lead to an artificial increase in costs that would be passed on by professionals to the overall cost of the repair.

The French authorities therefore have reservations about the proposal to deduct the cost of the quotation from the total cost of the service.

IV. Comments on the repair obligation of producers (Article 5)

a) On the time limits laid down in the directive (issue of the quotation, duration of the repair, determination of the defect) – Question 5

The French authorities believe that while, in principle, the parties should remain free to adjust the time required, in particular for the issue of a quotation, this may not be appropriate in cases where the defective product is covered by the repair obligation in Article 5.

In this case, the producer or his agent is under an effective obligation to repair, and this effectiveness should be achieved by carrying out the repair within a reasonable time.

The French authorities could support amendments aimed at defining the time limits within which the producer or its authorised repairer should be obliged to provide both the quotation and the repair service.

If deadlines cannot be set in the text of the directive, the French authorities support a drafting amendment that could be as follows (in red):

“1. Member States shall ensure that upon the consumer’s request, the producer shall repair, for free or against a price or another kind of consideration, within a reasonable time, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II”.

The concept of “reasonable time” proposed to be introduced should be understood as set out in recital 55 of Directive (EU) 2019/771 on the sale of goods, i.e. that reasonable time corresponds to “the shortest possible time necessary for completing the repair”.

b) On the liability of each economic operators – Question 6

The French authorities consider that the cascading of liability is set out clearly enough in Article 5.

However, the obligation to provide repair under Article 5 cannot be satisfied solely by the presence of a producer or one of its subcontractors within the EU.

Yet neither Article 5 nor its corresponding recitals stipulate how consumers should exercise their right to repair (contact details of the professional, geographical proximity, etc.).

The French authorities therefore propose adding to recital 15 that the producer cannot fulfil his obligation to repair by simply designating an operator in the EU and that it is up to him to ensure that the person responsible is known by the consumer and accessible. They consider that it is up to producers to implement their repair obligation in such a way that consumers can benefit from it without major inconvenience (costs too high, time too long, geographical distance).

Recital 15 could therefore be amended (in red):

*(15) "The obligation to repair should also be effective in cases where the producer is established outside the Union. In order to enable consumers to turn to an economic operator established within the Union to perform this obligation, this Directive foresees a sequence of alternative economic operators required to perform the obligation to repair of the producer in such cases. This should enable producers located outside the Union to organise and perform their obligation to repair within the Union. **Their obligation to repair cannot be fulfilled by the mere presence of a designated economic operator established within the Union. The producer shall ensure that the consumer benefits from effective repair without undue constraints, particularly in terms of time, costs or place.**"*

c) On the information obligation (Article 6) – Question 7

The ambition of Article 5 (obligation to repair) should be developed by clarifying Article 6 (information on obligation to repair) to ensure that the information required from the producer is more numerous and clearer, cf. question 9.

d) On the inclusion in the text of contracts concluded not in return for payment of a price but for "another kind of consideration" – Question 7

The French authorities have reservations about maintaining "another type of consideration" in Article 5(1) and, in any case, would like to ask the Commission about specific cases where goods would be repaired in return for the provision of personal data.

In addition, they propose that, as in French law, the terms "price" and "consideration" should be combined under a single term "for valuable consideration", corresponding to the following drafting change (in red):

*"1. Member States shall ensure that upon the consumer's request, the producer shall repair, for free or **for valuable consideration** ~~against a price or another kind of consideration~~, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair."*

e) On the categories of operators subject to obligation to repair – Question 8

Although it is always more profitable for the consumer to be able to rely on numerous categories of potential responsible parties within the Union, some of them may not be in a position to fulfil the obligation to provide redress under Article 5. This is the case for providers of order fulfilment services, which are mainly charged with logistics.

The French authorities consider that providers of order fulfilment services are not in the best position to fulfil an obligation to repair. Therefore, the choice to keep them excluded from the scope does not seem to jeopardise the objective pursued by the text.

f) On other points related to Article 5

The French authorities consider that spare parts should be accessible to all repairers, not just independent repairers, but also to consumers, to facilitate access to repairs, including by consumers themselves (development of repair cafés). They also believe that this access should be simple and that the producer should not impose any additional conditions to give access to spare parts.

Therefore, they propose the following amendment (in red):

*“3. Producers shall ensure that ~~independent~~ repairers **and consumers** have access, **without any additional condition**, to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II.”*

In addition, **the French authorities reiterate their proposal to add a new article to prohibit the practice of professionals seeking to restrict the distribution of their spare parts or even to prevent the repair of the goods they manufacture outside their authorised channels.** These practices go against the objective of Article 5 of the Directive, and are likely to lead to the premature end of life of goods.

This ban would complement the new practice 23i (in Annex I of Directive 2005/29) proposed in the proposal of Directive.

To this end, they suggest inserting an article between Articles 5 and 6 of the proposed Directive, worded as follows:

“Article 5 a.

Prohibition of the part pairing

1. Any technique by a producer or marketer which has the effect to prevent a repair, a refurbishment or limiting the restoration of goods outside its approved channels/circuits should be prohibited.

2. Any practice which has the effect to limit the access of a repairer to spare parts, to technical information, including software enabling the repair of products, should be prohibited.”

V. Comments on the information on obligation to repair (Article 6) – Question 9

The French authorities would like to see the producer's information obligation under Article 6 strengthened in order to consolidate the effectiveness of the repair obligation under Article 5 (mentioned above).

Consumers should be able to identify the professional responsible for the repair and the terms and conditions under which they entrust their goods to that professional. To this end, the producer should be required to provide the consumer with the necessary information on a durable medium.

In particular, the French authorities believe it would be useful for consumers to know the repairer's contact details, the quality of the repairer, his relationship with the producer (subcontractor, importer, distributor, independent repairer who has signed an agreement with the producer, etc.) and the means of collecting the goods (whether the goods should be dropped off at the repair site or sent by post).

In addition to informing the consumer at the time of purchase, the producer should also be obliged to keep this information updated and make it available to the consumer, where appropriate, on its website.

Lastly, the French authorities do not consider it appropriate to refer to the platform provided for in Article 7 as a means for producers to inform consumers about the repair procedures for each of their goods. This platform should in fact be reserved for repair services outside the scope of Article 5.

Thus, the French authorities are suggesting a rewording of Recital 20, as follows:

*“(20) In order to increase the consumer awareness on the availability of repair and thus its likelihood, producers should inform consumers of the existence of that obligation. The information should mention the relevant goods covered by that obligation, together with an explanation that and to what extent repair is provided for those goods, for instance through sub-contractors. That information should be easily accessible to the consumer and provided in a clear and comprehensible manner, without the need for the consumer to request it, and in line with the accessibility requirements of Directive 2019/882. ~~The producer is free to determine the means through which it informs the consumer.~~ **To this end, the producer shall inform the consumer, on a durable medium, at the latest at the time of the delivery of the goods, of the modalities for the consumer to obtain repair of the goods. In the same manner, the producer keeps this information updated and informs the consumer, without any due delay, of any change. The producer can upload this information on his website.**”*

Article 6 could also be amended as:

“Member States shall ensure that producers inform, on a durable medium, consumers of their obligation to repair pursuant to Article 5. ~~and They provide detailed and updated information on the repair services in an easily accessible, clear and comprehensible manner, for example through their website or the online platform referred to in Article 7.~~”

With these suggested amendments, the French authorities would like to ensure a greater effectivity of the provision.

VI. Comments on the platform (Article 7)

- a) On the introduction of a platform to connect consumers and repairers - Question 10

The French authorities reiterate their preference for an online platform at national level for the following reasons:

- France already has satisfactory experience with several websites registering repairers, with free access for all consumers, making it possible to find a local repair professional and functioning fairly closely to the requirements currently set out in the proposal for a directive.
- The idea of a European platform would risk distancing the consumer from the repairer and undermining the objective of this initiative (more sustainable consumption and protection of the environment). In particular, the further the repairer is from the consumer, the more negative the environmental impact of repairs will be.

The French authorities consider that the solution of a national platform with an access point on the EU portal could also be envisaged.

- b) On the inclusion on the platform of search functions for sellers of refurbished products and refurbishers – Question 11

The aim of the proposed directive is to encourage greater durability of goods. For the French authorities, the idea of connecting consumers and repairers via an online platform fully meets this objective.

However, allowing major economic operators specialising in the sale of second-hand and reconditioned goods and professionals in the purchase of defective goods to appear on such a site seems to fall short of this objective. Indeed, if consumers are encouraged to resell their goods or buy new ones, the platform could be diverted from its initial objective. The lure of change or the possibility of financial gain could in fact drive consumers away from the search for a repairer.

This is why the French authorities recommend that the platform should concentrate on finding repairers, if possible local ones, in order to best meet the ambition of more sustainable consumption.

VII. Comments on the primacy of repair (Article 12)

- a) On the primacy given to repair over replacement within the scope of the legal guarantee of conformity – Question 12
- On exceptions – Question 12.1

The French authorities reiterate their support for the provision making repair the preferred remedy over replacement when replacement is not more expensive, while accompanying it with compensatory measures favourable to the consumer, which are set out in the answers to the questions below.

- On control mechanisms for costs evaluation – Question 12.2

The French authorities are in favour of ensuring that repairs are not the result of an arbitrary choice by the seller, but rather that the assessment of their cost can be traced (in writing or on a durable medium). They reiterate their desire to strengthen the system by introducing an obligation for the trader to be transparent about the analysis of the defect and the determination of the cost of repair. The professional would thus be obliged to provide the consumer, on request, with detailed information on the analysis of the fault and the cost of repair.

They reiterate their proposal for a drafting amendment to this end, referred to in the reply to question 12.3 below.

- On the extension of the liability period after repair – Question 12.3

The French authorities are proposing the addition of a 6-month extension to the legal guarantee when the goods have been repaired under the legal guarantee of conformity.

As an illustration, they may recall that, under national law, any repair carried out under the legal conformity guarantee entails a 6-month extension of this guarantee period. This measure, introduced in 2020, is designed to boost consumer confidence in repairs and encourage them to opt for this remedy.

They therefore advocate the adoption of such a measure and reiterate their proposal to amend Article 12 of the Directive, revising Article 13 of Directive (EU) 2019/771 on the sale of goods, by adding two sentences (in red):

“In Article 13(2) of Directive (EU) 2019/771 the following sentence is added:

‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods in order to bring those goods in conformity.’

‘Any goods repaired under the legal guarantee of conformity benefits from a six-month extension of this guarantee.’

‘Upon request from consumers, sellers shall provide detailed information about the product failure analysis and the repair cost evaluation.’”

- On the extension of the reversed burden of proof period – Question 12.4

The French authorities support the extension of the period of presumption of anteriority of the defect over this extended warranty period in the event of repairs, in order to facilitate the implementation of the legal guarantee of conformity.

- On the possibility to choose replacement in any cases if the parties agree – Question 13

The French authorities believe that this proposal runs counter to the proposal to give primacy to repair, since it empties the objective of Article 12 of its substance.

- On the means of determining whether replacement costs are equal to or greater than repair costs – Question 14

This would be a very useful tool, but the French authorities have no proposals to make at this point.

- On the possibility for Member States to introduce measures to promote repair – Question 15

The French authorities are strongly supportive of the introduction of a new article allowing Member States to take measures at national level to promote repair.

As an illustration, in France, such a measure already exists for electrical and electronic products. A repair bonus introduced at the end of 2022 enables consumers to obtain a discount on the cost of repairs they request from a professional. The professionals eligible for the bonus label are listed on two platforms that can be consulted free of charge by consumers. The repairer is reimbursed for the deduction from the invoice price corresponding to the bonus by the eco-organisation (extended producer responsibility scheme) for the sector concerned.

The French authorities also consider that, in order to ensure the development of repair, Member States could also be authorised to provide that, in certain cases, where the repair time exceeds X days, the repairer should be able to loan or rent a replacement item to the consumer. This provision, subject to adjustments for small businesses and independent repairers, would make it possible to prevent consumers from immediately buying a new item after a breakdown to avoid being deprived for too long of an everyday consumption item (refrigerator or washing machine, for example).

Finally, the French authorities believe that the text should explain more clearly the conditions under which Member States are authorised to maintain their national legislation, particularly where it is more advantageous to consumers. To this end, they propose the addition of a new recital:

"This Directive shall not prevent Member States from adopting provisions to promote repair outside its scope where such provisions are more favourable to consumers"



Discussion paper – Right to Repair – Comments Luxembourg – 25/07/2023

We would like to thank the Presidency for this discussion paper, which is very helpful in guiding the discussions. Please note that our comments should be considered preliminary at this stage. In addition, please also note that our comments in document ST 7767/2023 remain valid.

1.- Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

Luxembourg considers that a definition of “repair” is essential in order to tackle properly the scope of the text. Using the definition in the Ecodesign Regulation would ensure consistency between the two pieces of legislation.

As far as independent repairer, we are not convinced of the added value of such a definition. We believe that the article 2, point 4 already covers the notion of independent repairer when it distinguishes between repairers who are independent or linked to producers or sellers. Moreover, this notion is only used in Article 5(3), which states that producers shall ensure that independent repairers have access to spare parts and to repair information and tools. Furthermore, we believe that this obligation should not be integrated within the present text, but should be covered by the Acts referred to in the Annex II in order not to risk creating a double (possibly different) obligation to provide access to spare parts and to repair information and tools both in Ecodesign sustainable product Regulation (ESPR) and its implementing acts as well as in the Right to Repair Directive (R2R).

For purely formal and technical drafting reasons, we would also suggest adding the definition of durable medium in order to simplify the wording of Article 4(1).

2.- Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

We believe that the scope should remain consistent with the Ecodesign sustainable product regulation (ESPR).

3.- Regarding the European Repair Information Form, would you be in favor of adding any other conditions in article 4, paragraph 4? If so, which?

Yes, we think that it would be useful to add the period of validity of the European Repair Information Form referred to in Article 4, paragraph (5) as this information is essential for the consumer.

It could be written as followed: “(j) the period of time during which the repairer shall not alter the conditions of repair specified in the European Repair Information Form.”

On the principle of the form, Luxembourg considers that the wording could be clarified as to whether paragraph 2 constitutes an obligation for all repairers, including those who are not producers of goods covered by the Annex II. If so, LU wonders whether a lighter version of the form or even no form at all for “small” repairs or “standard” repairs needs to be considered in order to avoid a burdensome administrative charge.

4.- Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

We are not opposed to the idea but we think it should remain a commercial argument that repairers could use as a competitive advantage.

Instead, in order to mitigate the deterrent effect of a paid form, we suggest that the principle of free or limited-cost forms should be included. This means that it is only by exception that the repairer could charge the consumer for the actual costs involved in assessing the repair of the good.

We would suggest inserting in paragraph 3 of Article 4 a first subparagraph worded as follows: “The European Repair Information Form is provided by the repairer free of charge or with limited costs for the consumer.”

5.- Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

We are open to discussion but we are not particularly in favour of adding time limits for the various situations covered. We do not see any real added value insofar as non-compliance with these deadlines could not result in a sanction for the professional, as it would not in itself constitute a sufficient failure in the situations in question to generate a penalty.

6.- Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals?

If so, how would you clarify it?

Luxembourg is not in favour of the sentence “The producer may sub-contract repair in order to fulfil its obligation to repair.” because we do not see an added value to this precision. The manufacturers are free to sub-contract their obligation to repair. The question of the subcontractor's liability should be governed by ordinary tort law. We believe that the consumer should have only one interlocutor, the manufacturer, who, if his/her liability were to be engaged in an unjustified manner, would be able to engage the liability of his/her subcontractor. In fact, this is how the Sales of Goods directive (SGD) addresses this issue in Article 18 on the right of redress.

7.- Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals?

Luxembourg does not support the expression “or another kind of consideration”. We consider it to be neither clear neither appropriate in the event that it includes personal data. Although we are very receptive to the issue of having a future-proof text, the provision of personal data in exchange for a service should be limited to situations where the personal data and the service provided are linked as in the case of the supply of digital content or digital services in the meaning of the Digital Content Directive 2019/770 (DCD). The aim of including this reference in the DCD was to allow consumers to benefit from legal protection in seemingly “free” contracts (these kind of “free” services are generally based on an economic model where personal data are collected by the providers in order to create value from the data processed).

However, in the case of the R2R Directive, the situation is different because it will be a question of repairing goods that fall within the scope of the SGD, i.e. tangible movable goods and not digital content or digital services (except for water, gas and electricity). Since consideration in the form of the supply of personal data has not been included in the SGD, we do not understand why this consideration should be included in this Directive. Moreover, this would broaden the concept of price, which could also have consequences for the rest of the contracts covered by consumer law.

Finally, the European Data Protection Supervisor (EDPS), supported at national level by the Commission Nationale pour la Protection des Données (the National Commission for Data Protection in Luxembourg), had already warned the legislator in its opinion 4/2017, stating that “personal data cannot be compared to a price, or money. Personal information is related to a fundamental right and cannot be considered as a commodity.”

8.- Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfillment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for the repair? If so, why?

Regarding the liability of the fulfillment service providers, we have a negative scrutiny reservation.

Luxembourg also considers that the reference to the notion of producer in this text may lead to confusion in the context of the Sales of Goods directive. The SGD and the national transposition pieces of legislation refer to a broader concept of producer as far as producer means “a manufacturer of goods, an importer of goods into the Union or any person purporting to be a producer by placing its name, trade mark or other distinctive sign on the goods” (article 2, point (4) SGD). However, this proposal refers not to the producer within the meaning of SGD but to the manufacturer within the meaning of ESPR. We therefore suggest that, in order not to cause confusion between the legislations, the text should directly refer to the manufacturer within the meaning of ESPR.

9.- Regarding article 6, would you further develop the information to be provided? What information would you include and why?

No, Luxembourg thinks that the information foreseen in article 6 are sufficient.

As regard to the information to be provided, we also wonder whether information on the obligation to repair could be included in the Digital Product Passport (DPP). The DPP seems to be a communication medium which is easily accessible to the consumer and which would bring together the essential information that the consumer needs to know about the good.

10.- In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal. Why?

(i) or (iii)

The more efficient in our view would be an online platform on national level or on national level with an access point on the EU portal.

We believe that a national platform is closer to consumers and repairers and will make it easier to promote the repair sector. The European access point would have the advantage of centralising the various national platforms and encouraging cross-border repairs.

11.- Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

Luxembourg believes that offering a search for sellers of refurbished goods and buyers of defective goods intended for refurbishment should not be an obligation on the platform, but that it should remain a voluntary option for the Member State to include these categories.

12.- Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

12.1 Exceptions. If so, which one(s)?

No, the SGD text already includes exceptions. Generally speaking, with the exception of the choice left to the consumer in the context of bringing the goods into conformity (repair instead of replacement), which has been evaluated as part of the work on this directive, we believe that the R2R directive is not intended to reform the existing SGD regime.

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

No, we do not see added value on introducing specific control mechanisms on the assessment of the costs of repair as far as a similar assessment is already carried out in the context of the SGD,

without any specific control mechanism, for example, when assessing whether the cost of the remedy chosen would be disproportionate for the seller (article 13, paragraph 2).

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

Luxembourg is open to reflect on measures or incentives in order to rebalance the rights of consumers.

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

Luxembourg is open to reflect on measures or incentives in order to rebalance the rights of consumers.

13.- Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) of the Sale of Goods Directive (EU) 2019/771

Luxembourg does not see the added value of such an express provision insofar as Article 21(2) is sufficient in itself.

14.- Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

No, Luxembourg thinks that the evaluation of the costs will have to be carried out on a case-by-case basis.

15.- Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

Luxembourg thinks that references to incentives in the recitals by way of illustration might be useful, but we are not in favour of an obligation for Member States to take such measures.

Ireland's written comments on the Spanish Presidency Discussion Paper for meeting on 14 July on the proposal a Directive on common rules to promote repair of goods.

- 1. Do you consider it useful to include a definition of a repairer and independent repairer? If so, how would you define them.**

Yes, in order to provide statutory clarity and certainty; to encourage and promote a market for independent repairers; provides a statutory basis to develop standards and rights for an independent repairer including rights of access to-spare parts from producers, codes and /or trade manuals, training and safety programmes for reparation of complex goods.

In terms of definition- an independent repairer is not the following: retailer; distributor; wholesaler; or producer/manufacturer and has not entered into any exclusive, selective or restrictive agreements with any of them that may cause prejudice against the interests of the consumer or the smooth functioning of the market for independent repair service providers.

- 2. Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense.**

We support the scope of the proposal as it is. We are wondering if it might be worth including "maintenance" with repair. Maintenance could help to prevent the need for repair or delay repair, giving longer life to a good and is within the spirit of the proposal. Also, it could encourage those involved in the trade, who provide maintenance services, to register on the platform, and contribute to sustainability in this way.

- 3. Regarding the European Information Form would you be in favour of adding any other conditions in article 4, paragraph 4? If so, which?**

At Article 4 paragraph 4 [to include] ...

c)... spare part(s) to be required

d) The necessity or otherwise for the repairer to obtain spare parts. An option to be provided to the consumer to obtain and supply the repairer with any spare parts.

- 4. Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?**

No, this not in the interests of the consumer, and it should be standard business practice of the repairer to generate this business document as it is with the production of invoices/receipts. Otherwise, it may act as an economic disincentive.

Consumers should not be specifically subjected to costs for business forms by traders.

The "necessary costs" to be charged in relation to the form need to be made very clear and need to be specified - do they relate to the administrative cost of supplying the form, do they include the call out charge and the actual repair costs.

5. Would you support introducing time limits in order to benefit the consumer? E.g., time limits within which to provide the Form, the repair service, and the assignment of the defect. If so, in which cases? Which should be the time frame.

Time frames could be useful particularly for certain goods such as communications devices. A time limit could be set for the repair service. On the expiration of a reasonable time frame, the consumer could be afforded the right to have the unrepaired good returned with no cost incurred. The consumer at his option could waive their right to have the repair subject to a time limit on the basis of the complexity and spare parts and/or craftsmanship required for the repair of the good. There is a need to be mindful too that 'rushed repairs' can do more harm than good. Temporary replacement of the good by the seller reduces consumer inconvenience and should entitle a longer time limit and may incentivise stocking of temporary replacement goods for this purpose.

Time limits may put too much pressure on certain businesses to hold high inventory levels of spare part; so caveats and flexibilities may be required around the proposal for time limits; at this preliminary stage, an open minded position on time limits is being held.

6. Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

Yes, however it should not be the concern of, or have any onus put on the consumer in relation to ascertaining division of liability between these parties for the recovery of loss. The consumer should be entitled to recover in full any loss from one party and it is for that party to recover or obtain an indemnity against the other party.

7. Do you believe the expression or another kind of consideration in article 5 paragraph 1 is useful? If so, would you keep it in the article or recitals.

Yes, this element should be retained in the Article. The recitals could explain the concept/doctrine of consideration and examples thereof. A good example is the consumer's consideration of 'forbearance to sue for damages and loss' in exchange for the acceptance of liability by the producer and his undertaking to repair of the good. In the subsequent event of a failure to repair or an unsatisfactory repair, the

consumer can then sue for loss on foot of same without having to prove liability. The recitals should make clear that the consumers rights under Articles 13/14 of the SGD are consistent with and not adversely affected by Article 5.

- 8. Regarding the cascade of obligation to repair which is foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020) as an economic operator responsible for the repair.**

‘Fulfilment service provider’ as defined in Article 3 of the said 2019 Regulation means a commercial service provider of at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, (it excludes postal services). Placing some statutory duty to repair on such ancillary service providers is too complicated and is not in the best interests of the consumer. It should be a matter for the producer/seller to indemnify themselves in relation to risks of transit; while accepting its liability to consumers to repair or replace damaged goods.

- 9. Regarding article 6, would you develop the information to be provided? What information would you include and why?**

Information should include access to spare parts including trade manuals, codes, reference numbers for these parts; specialised and/or future- proofed information may be required for the repair of electronic goods/goods interconnected with digital content/services regarding installation/updates etc. Information on service and maintenance of the goods, including service intervals to ensure the longer durability of the goods would be useful and would complement the specific durability information recited in Recital 32 of the SGD. Recital reference could be made in regard to the accessibility, availability and storage (e.g. stored by way of a durable medium) of such information with a minimum time-frame stipulated as to these requirements around same.

- 10. In view of supporting the growth of repair market, what would be more efficient in your view: establishing an online platform at i) national level, ii) EU level iii national level with an access point on the EU portal Why?**

The repair market should be accessible for a consumer at an EU market level. It would allow wider choice to consumers and more competition on prices and quality of service. Also, there would be more consistency/harmonisation of approach. As it is an online platform, location at EU level could not create any distance between repairer and consumer. An EU platform would involve a single cost, while if at national level, the costs are hugely multiplied. For countries with smaller populations, the volume of repairers will be less and not so many available to compare in a particular locality, therefore, investment in a platform may not bring

any great benefits. Also, as registration is voluntary, how many repairers may engage with the platform, particularly, very small local repairers, is not known. The advantages of setting up and maintaining a platform at national level are aspirational rather than objective at this stage.

An EU platform also provides business opportunities for SME's providing repair services. Some repair markets are so niche and specialised that repairers would require online visibility within the internal market to achieve an economically viable level of economies of scale.

11. Do you support the provision in article 7 para 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

Yes, the provision and promotion of a market for refurbished or worn goods should be encouraged particularly in terms of online accessibility and findability. The search function could be expanded to include a brand category for consumer's ease of reference and findability.

12. Regarding Article 12 would you support the provision as it is? (SGD amendment)

The policy of promoting repair over replacement in terms of economy and environmental sustainability is clear within this provision. It has to amend Article 13 SGD regarding: 'where the consumer may choose between repair and replacement'. It amends the SGD provision by making that choice subject to a further condition (as amended by Article 12) where it now requires the seller to repair the goods where the costs for replacement are equal to or greater than the costs for repair. As a result, the consumer may only choose replacement as a remedy when it is cheaper than repair.

This amendment does fetter the consumer remedy of choice on replacement and repair. A supporting recital at least may be required to elaborate on ways to mitigate the effect of the amendment: e.g. sellers are encouraged or mandated to provide for temporary replacements particularly for certain goods-cars, prams, wheelchairs.

Further, from an Irish perspective, it should be noted that Article 3(7) of the SGD states it shall not affect the freedom of Member States to allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent within a period after delivery not exceeding 30 days. As the right to reject non-conforming goods without having to agree to their repair or replacement is a long-established right under Irish consumer sales law, sections 23 and 24 of the Consumer Right Act 2022 (CRA 2022) gave effect to this regulatory option. There may be requirement or reassurance (via a recital) that the Article 3(7) has not been impacted

by the Article 12 amendment, so as to preserve the full domestic (CRA 2022) scope of the short term right to terminate, (even for minor non-conformity).

Would you complement the provision by including other measures in the proposal? E.g.

12.1 Exceptions which one(s)?

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s).

Seller should provide a proper breakdown of costs itemising costs of labour, materials spare parts. See answer to Q14 below.

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

Yes, the extended period could be half the liability period pertaining for a new goods and/or to have consistency with the provisions of the SGD. Note Ireland's domestic limitation period (6 years) and short term right to reject.

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension.

See answer to Q12.3 above.

13. Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in Article 21(2) SGD

Yes, on the basis that it would be a fetter on trade and might be otherwise difficult to enforce. In terms of replacement, the disposal of damaged/defective goods should have adequate channels for recycling or refurbishment or scrappage.

14. Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

Yes, though cost of repair may need to be broken down/compartimentalised into cost of labour and cost of materials/spare parts to ascertain the repaired good's estimated comparative price against the replacement cost.

15. Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

This should be voluntary and left up to Member States to decide how to approach it.

Proposal for a directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 – WK 2023/0083

Presidency discussion paper – WK 9524/2023 INIT

PT written comments

Question 1

Do you consider it useful to include a definition of “repair” and “independent repairer”? If so, how would you define them?

Given the scope of the proposal and the obligations currently foreseen, PT does not identify the need to introduce a definition for “repair” nor for “independent repairer”.

Nevertheless, PT could agree with the introduction of such definitions, since they can be beneficial to ensure legal certainty.

In what regards the definition of “repair”, the Ecodesign definition may be used as a basis for work, as proposed by some delegations at the last meeting of the WP.

Question 2

Regarding the scope of the proposal, would you be in favour of modifying it? If so, in which sense?

Yes, PT could support an amendment to the scope of the proposal. In fact, although PT supports the objectives of the COM proposal, i.e. strengthening the right to repair, namely by ensuring that consumers have more repair options outside the legal guarantee period, PT considers that the proposal could be more ambitious by establishing more safeguards for consumers regarding repair, starting with the amounts charged for repair services. In PT's view, it is essential to ensure that consumers have access to repair services at reasonable costs, so that they can choose to repair their products instead of investing in buying new ones. Only in a reality where repair is affordable, can there be a real alternative to mere product replacement.

Question 3

Regarding the European Repair Information Form, would you be in favour of adding any other conditions in article 4, paragraph 4? If so, which?

Yes, PT could support an amendment to Article 4(4) to increase the information requirements to be included in the Form, namely:

- a) Information regarding the validity of the quotation/repair conditions established in the Form;
- b) On top of the repairer identity, details on its technical qualification and related insurance (e.g., a registration number or a *weblink* to a national profession registry where the repairer would be registered, proving its qualifications to be a repairer).

Question 4

Would you support the idea of deducting the price charged to the consumer for the provision of the Form, where applicable, where the consumer chooses to have the product repaired?

Yes, PT would support the provision of deducting the price paid for the provision of the Form from the price of the repair service when it is provided.

Question 5

Would you support introducing time limits in order to benefit the consumer? E.g. time limits within which to provide the Form, the repair service, and the assessment of the defect. If so, in which cases? Which should be the timeframe?

Yes, PT considers it important to set time limits both for the provision/preparation of the form, which could be set "*within a reasonable period*" to the consumer, and for the provision of the repair service, which, unless there are good/understandable reasons, should not exceed 30 days.

Question 6

Do you think a clarification about the division of liability between producer and subcontractor should be included in the articles or the recitals? If so, how would you clarify it?

PT agrees that producers should be able to subcontract repair services, as foreseen in the proposal, in order to ensure better access to these services for consumers, namely because they are closer, which will contribute to reducing the carbon footprint of repair, promoting a more sustainable production and distribution pattern. Thus, PT is of the opinion that producers should be obliged to provide information on the identity of subcontracted services/professionals, where applicable.

However, for the time being, PT does not identify a specific need to clarify in this proposal the contractual relationship/division of liability between producers and the services subcontracted

by them, since the relevant contractual relationship is that established between the consumer and the producer.

Question 7

Do you believe the expression “or another kind of consideration” in article 5, paragraph 1, is useful? If so, would you keep it in the article or do you prefer to explain it in the recitals.

As mentioned before, PT questions what should be understood by “or another kind of consideration”. Since the recitals do not contain any examples of other consideration, it seems unclear what is meant by this expression. In this context, PT has difficulty in assessing the usefulness/pertinence of the reference in question. Without prejudice, and as a preliminary point, PT could support a reference and explanation in the recitals rather than its inclusion in the article.

Question 8

Regarding the cascade of obligation to repair foreseen in article 5, would you be in favour of including the fulfilment service providers (within the meaning of Market Surveillance Regulation EU 2019/1020), as an economic operator responsible for repair? If so, why?

For the time being, PT has a scrutiny reservation regarding this matter and is examining the appropriateness of including fulfilment service providers as professionals liable for the repair obligation under the same terms as for producers.

Question 9

Regarding article 6, would you further develop the information to be provided? What information would you include and why?

Given the importance of ensuring that consumers are aware of the existence of the new obligation established in the proposal, PT considers it essential to clarify the terms in which this information is made available. Therefore, in response to the question posed, PT considers that it is of the utmost importance to clarify in this provision the moment when producers should inform consumers of their obligation to repair.

On the other hand, and in line with the answer to question 6, PT considers that producers should be obliged to provide information on the identity of subcontracted services/professionals, whenever applicable.

Question 10

In view of supporting the growth of repair market, what would be more efficient, in your view: establishing an online platform at (i) national level, (ii) EU level; (iii) national level with an access point on the EU portal? Why?

PT supports the position of BE and SI regarding the creation of a single platform at EU level (instead of national platforms), as this would allow a wider range of choices for consumers, especially for consumers residing in MS where the repair market is quite small.

As already identified by other MS, PT has some reservations regarding the obligation under Article 7, as it could create a considerable administrative and budgetary burden for MS, and therefore views positively the FI proposal to provide for the **possibility** of developing these platforms by MS, rather than **obliging** them to create them.

Question 11

Do you support the provision in article 7, paragraph 2, regarding the inclusion of a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment? If not, would you support it as a voluntary option? Why?

Yes.

PT supports the development of refurbishment if it is ensured that the actor performing refurbishment is professional and complies with product safety and other relevant legal requirements.

Question 12

Regarding article 12, would you support the provision as it is? Would you complement the provision by including other measures in the proposal? E.g.:

12.1 Exceptions. If so, which one(s)?

12.2 Control mechanisms on the assessment of the costs of repair so that it is not left to seller's sole assessment. If so, which one(s)?

12.3 An extended liability period starting from the moment the repaired good is returned to the consumer. If so, what should be the period of extension?

12.4 An extension of the reversal period of the burden of proof in the above-mentioned situation. If so, what should be the period of extension?

As already mentioned, PT has reservations regarding the amendment to Article 13(2) of Directive (EU) 2019/771, first of all regarding the imposition of repair in case of lack of conformity of the good, thus eliminating the current solution that allows the consumer to choose between repair and replacement.

PT considers that this provision presents several problems of interpretation. Firstly, it is not clear how the solution presented is compatible with the current Article 13(2) of Directive 2019/771. Furthermore, recital 28 does not clarify the link between the new provision introduced by Article 12 and the judgment of “disproportionality” currently laid down in Directive 2019/771. It is not clear how the judgement of “disproportionality” can be of assistance when the provision imposes reparation on the mere assumption that its cost is equal to that of replacement.

On the other hand, in PT's view, it is essential to ensure that the incentive to repair does not result in a decrease in the current level of protection of the rights and interests of European consumers, something that, strictly speaking, results from the proposal in Article 12.

In fact, **PT considers that the strengthening of the right to repair should include real incentives, such as the extension of the guarantee period accompanied by an extension of the period for the reversal of the burden of proof (which should be aligned with the guarantee period).**

Question 13

Would you support a provision expressly acknowledging that the parties remain free to agree on replacement also in cases where the costs for replacement are the same or higher than the repair (as provided in article 21 (2) of the Sale of Goods Directive (EU) 2019/771)?

PT preliminarily considers that this proposal could be positive for consumers. However, considering PT's understanding of the current wording of Article 12 and in view of the amendments to that provision that may still take place, PT reserves its position for the time being.

Question 14

Do you think it is possible to define a way to determine if the costs for replacement are equal to or greater than the costs for repair? If so, how?

PT has, for the time being, a reserve to analyze the possibility of establishing a cost measurement mechanism/criteria. Nevertheless, PT is open to the possibility of analyzing a proposal put forward by PRES.

Question 15

Would you find it useful to include in the proposal the possibility for Member States to take measures to promote repairs, such as funds, repair vouchers or other incentives? If so, what measures?

Yes, PT considers that it would be useful to provide for such a possibility, as these measures are already common practice in some MS. Therefore, mention could be made of the possibility of providing incentives to reduce the price of repairs, such as repair vouchers or eco-modelling of the eco-values that products pay under extended producer responsibility. In fact, regarding this last example, incentives, such as charging lower eco-value rates, to design products with high reparability standards, necessarily have an impact on the promotion of repair, as well as on the choices of consumers, who may thus, in turn, choose more easily to repair their products.